United Nations CERD/C/SR.2432

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
12 May 2016

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2432nd meeting
Held at the Palais Wilson, Geneva, on Monday, 2 May 2016, at 3.05 p.m.

Chair: Mr. Calí Tzay (Vice-Chair)

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Combined sixth to eighth periodic reports of Georgia

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined sixth to eighth periodic reports of Georgia (CERD/C/GEO/6-8 and CERD/C/GEO/Q/6-8)

1. *At the invitation of the Chair, the delegation of Georgia took places at the Committee table.*

2. **Ms. Totladze** (Georgia) said that a National Action Plan for the Protection of Human Rights was being finalized for the period 2016-2017 in order to coordinate government efforts to implement the provisions of international human rights treaties and the recommendations received by Georgia following its universal periodic review. In that connection, various monitoring and coordination bodies, such as the Gender Equality Council and the Committee on Human Rights and Civil Integration, had been established. A comprehensive Human Rights Strategy (2014-2020) and Action Plan (2014-2015) had also been adopted by the Government.

3. In addition, an anti-discrimination law had been adopted in 2014, following a drafting process involving all relevant government ministries and non-governmental organizations. Both direct and indirect forms of discrimination, on a wide range of grounds, were prohibited by the law. The Public Defender's Office was tasked with monitoring the implementation of the law, through its Equality Department. Between 2013 and 2015 the budget of that office had increased by 77 per cent.

4. The Criminal Code of Georgia had also been amended; any crime committed on discriminatory grounds was now considered to be aggravated. A range of awareness-raising and training activities had been carried out for law enforcement personnel, in collaboration with the Public Defender's Office and various international organizations. The number of criminal investigations conducted by the authorities into cases involving religious intolerance had increased each year and charges had been brought in 6 out of 9 cases in 2016.

5. The Georgian Government was committed to providing decent living conditions for all internally displaced persons. Nonetheless, the only appropriate, long-term solution was the voluntary return of those persons, in accordance with United Nations General Assembly Resolution 62/249 on the status of internally displaced persons and refugees from Abkhazia, Georgia. The Government had invested in durable housing solutions for internally displaced persons, dramatically increasing the State budget in that area. Efforts had also been made to provide financial assistance for mortgage loans for those persons as well as to facilitate their employment and education.

6. Georgia had a number of large ethnic minority populations, including Azerbaijanis and Armenians. A new Civic Equality and Integration Strategy and Action Plan had been adopted for the period 2015-2020, to coordinate State policy on ethnic minorities. The Strategy would promote equality and the economic and social integration of all minorities, especially the Roma. Ethnic minorities had access to education, at all levels, in their native languages. Television and radio programmes were broadcast in five different national minority languages and print media were also available in a number of different languages. Representatives of ethnic minority communities were well represented in public bodies as well as in local and national elections. There were seven ethnic minority representatives at present in the Parliament of Georgia. However, ethnic identity was not registered by the State authorities, so all such data were based on self-identification and reports and surveys. The Government also implemented measures to provide ethnic minorities with information

on health care and social benefits in their native languages and to support activities which promoted the culture of ethnic minorities.

7. Between 2012 and 2015, 275 Roma had been registered with the authorities and granted appropriate legal status. They also had access to free legal advice. The Ministry of Education was implementing a social inclusion programme to support the integration of vulnerable groups, including Roma, into the formal education system. As a result of the programme, the number of Roma children attending school had almost doubled between 2014 and 2015. A project funded by the European Union, entitled Reaching Highly Vulnerable Children in Georgia with a Focus on Children Living or Working on the Streets, had set up a number of centres providing assistance and care to vulnerable children.

8. Georgia had ratified the 1961 Convention on the Reduction of Statelessness in 2014 and had subsequently amended the Organic Law on Citizenship of Georgia in order to set up mechanisms to reduce the number of stateless persons. In terms of education, asylum-seekers and refugees were granted the same rights as Georgian citizens. Under Georgia's Migration Strategy and Action Plan, integration programmes, including health care, legal aid, accommodation and education services, would be provided to migrants.

9. Non-discriminatory access to health care was guaranteed to citizens and non-citizens alike under the laws of Georgia. Information campaigns on Georgia's health-care programmes specifically targeted ethnic minorities, in order to raise awareness of the services available.

10. To date, 5,841 persons from 7 different countries had applied for repatriate status, in the context of the repatriation of persons forcibly deported from Georgia by the Soviet Union in the 1940s. A simplified procedure to acquire Georgian citizenship had been established for those persons. The repatriation strategy was based on the principles of equality and non-discrimination.

11. Two regions of Georgia, Abkhazia and the Tskhinvali region, were occupied by the Russian Federation. Since 2008, the ethnic Georgian population in those regions had been subjected to discriminatory acts, including armed attacks, arbitrary detention and ill-treatment. The Office of the Prosecutor of the International Criminal Court had previously stated that crimes committed against ethnic Georgians had been carried out on discriminatory grounds. As a result of the violence against ethnic Georgians in South Ossetia, there had been a significant reduction in their numbers, estimated at around 75 per cent. Discriminatory practices against ethnic Georgians had also been recorded on the administrative border between the occupied regions and Georgia, including instances of alleged arbitrary detention and ill-treatment. Ethnic Georgians were not granted equal property rights or access to education in their native language in the occupied regions. The legal status of ethnic Georgians in those regions had recently been called into question, sparking fears of even greater difficulties in exercising their rights on an equal footing with other citizens in the future. The Georgian Government called on the international community to set up monitoring mechanisms in the occupied regions, in order to improve the human rights situation.

12. The Government provided free health care to persons living in the occupied regions and also facilitated their access to higher education programmes in Georgia. Various programmes to provide utility services in border regions had also been carried out.

13. **Ms. Crickley**, speaking in her capacity as Country Rapporteur, said that the Committee was grateful to the State party for having submitted its periodic report on time but that, in future, it should endeavour to adhere more closely to the prescribed word limit. The State party should also ensure that non-governmental organizations (NGOs) had the opportunity to participate in future interactive dialogues with the Committee, as they made a valuable contribution to its work.

14. The Committee recognized that Georgia had been confronted with ethnic and political conflicts in Abkhazia, Georgia and South Ossetia, Georgia since gaining its independence and that those territories remained outside its effective control, which made it impossible to implement the Convention fully in its national territory. However, there was no doubt that those ongoing ethnic and political conflicts had implications for the situation of refugees and internally displaced persons in Georgia. The State party's core document (HRI/CORE/1/Add.90/Rev.1), while rich in information, dated back to 1999 and needed to be updated.

15. The results of the census conducted in 2014 showed a marked decline in the country's ethnic Georgian population and an even greater decline in its ethnic minority population. It would be useful to receive statistical data, disaggregated by age and sex, on the ethnic composition and demographic distribution of the population to complement the results of the census. The Committee would be particularly interested to learn more about the population of the smaller ethnic groups living in Georgia, such as Jews, Assyrians, Kurds and Greeks. She asked what progress the State party had made in increasing the participation of ethnic minority groups and women from ethnic minority groups, in particular in national decision-making processes. She would also like to receive assurances from the State party that the current electoral district boundaries would not have a negative impact on the participation of ethnic minority groups in the 2016 elections or their representation in the Georgian Parliament. She also wished to know of the measures in place to facilitate the social integration of persons belonging to ethnic minority groups in Tbilisi and to ensure their continued representation on the Tbilisi city council.

16. The State party's use of the term "ethnic/national minorities" in its periodic report appeared to draw a distinction between members of recognized national minorities who were Georgian citizens and members of other ethnic minorities who were not. Recalling that the Convention also prohibited discrimination against non-citizens, she urged the State party to desist from using that term, as the distinction that it drew could be used to justify the exclusion of and/or discrimination against members of other ethnic minorities who were not Georgian citizens.

17. Taking note of the various legislative advances made by the State party, she drew particular attention to the amendment of the Criminal Code to establish the racial motivation of a crime as an aggravating circumstance and the adoption of the Law on the Elimination of All Forms of Discrimination, which was closely aligned with the anti-discrimination legislation of the European Union. It would be useful to know of the status enjoyed by the Convention in the domestic legal framework; the number of cases in which the Convention had been invoked and applied by the national courts; the number of complaints of racial discrimination registered from 2013 onwards; and the number of prosecutions brought for that offence. It should be recalled that the absence of complaints of racial discrimination did not necessarily indicate the absence of the phenomenon itself, rather it pointed to a lack of effective complaints mechanisms and mechanisms to monitor the implementation of the Convention.

18. Furthermore, the State party should expedite the adoption of the recommendations made by the European Commission against Racism and Intolerance and the amendments drafted by the Public Defender aimed at further strengthening the country's anti-discrimination legislation, in particular the amendments obliging private actors to provide information to the Public Defender in cases involving racial discrimination.

19. The fact that the labour inspectorate, which was the body responsible for enforcing the anti-discrimination provisions of the revised Labour Code, had been inactive for several years was major cause for concern. She asked how the State party intended to address that gap in its oversight machinery. It would also be helpful to receive statistical data on employment, disaggregated by ethnic group. She asked how the State party planned to

reduce the high unemployment rate in areas where there was a high concentration of ethnic minority groups.

20. She invited the State party to provide an overview of its efforts to raise public awareness of the Law on the Elimination of All Forms of Discrimination and to indicate whether it had launched awareness-raising campaigns targeting specific ethnic minority groups and, in particular, women belonging to such groups. She would also be interested to learn of the indicators used to measure the impact of those efforts. She asked what measures the State party had taken to halt the activities of and outlaw associations promoting or inciting racial discrimination, particularly those targeting Muslims. She also wished to know whether law enforcement officers, prosecutors and judges received training designed to raise their awareness of the multiple dimensions of racial discrimination and to allow them to deal with the phenomenon effectively. She would be particularly interested to know whether law enforcement officers received pre-service training of that nature; whether in-service training on that subject was compulsory; and whether the completion of such in-service training could have a bearing on career advancement.

21. Turning to the Migration Strategy and Action Plan 2016-2020, she enquired about its budget and staffing levels and its main objectives and lines of action.

22. Noting that Roma children living in Tbilisi were not always provided with identity documents as a matter of course, she asked how the State party planned to remedy that shortcoming. The Committee would welcome additional information on the State party's strategy to guarantee those children access to appropriate education. Moreover, it was her understanding that children born to stateless parents living in Georgia might also be classified as stateless. She asked whether that was indeed the case and, if so, what measures the State party envisaged taking to prevent that situation from occurring. The Committee had also received reports that a large number of children were placed in institutional care in Georgia. She asked what proportion of those children belonged to ethnic minority groups.

23. She asked when the programme to repatriate the members of the Meskhetian Turk community in Georgia who had been exiled from the Soviet Socialist Republic of Georgia by the former Soviet Union in the 1940s would be rolled out, and what measures the State party envisaged taking to facilitate the social integration of repatriated persons; to guarantee them access to education, employment and health care; and to help them overcome any linguistic barriers that they might face. There was also a need to raise public awareness of the difficulties faced by repatriated persons. If the granting of Georgian citizenship to repatriated persons was made contingent, under the simplified procedure for that purpose, on their renouncing any other citizenship within a certain time frame, that could pose practical problems, as renouncing citizenship was not always a quick and straightforward process.

24. The Committee had received reports that asylum seekers were routinely denied entry to Georgia on the grounds of State security and were not informed of the reasons behind that decision. She asked when the bill on international protection would be adopted; whether it provided for the possibility of granting asylum seekers and refugees leave to remain on humanitarian grounds; and under what circumstances international protection or leave to remain could be withdrawn. She would also appreciate information on the protection afforded to asylum seekers and refugees who arrived at the Georgian border.

25. Lastly, she asked how the State party ensured that its cultural initiatives, including those carried out through the media, effectively contributed to the removal of barriers to interculturalism and full social integration.

26. **Mr. Murillo Martínez** said that the State party was to be commended for providing useful disaggregated data on the funding allocated to efforts to combat racial discrimination and to the construction of housing for internally displaced persons. He asked whether civil

society had contributed to the drafting of the Law on the Elimination of All Forms of Discrimination. Given that all citizens had the right to participate in the political life of the country, he would appreciate additional information on the representation of ethnic minority groups in national decision-making bodies.

27. Noting that the Constitution guaranteed the payment of compensation for damage arising from human rights violations, he asked whether the judicial bodies responsible for punishing racial discrimination were equipped with mechanisms for providing compensation to the victims of that phenomenon. He also wished to know whether the burden of proof could be reversed in cases involving racial discrimination. The list of exceptional circumstances under which the Government could restrict certain constitutional freedoms seemed to be quite extensive. He asked whether any complaints concerning the imposition of such restrictions had been lodged by groups that had suffered historical discrimination in Georgia.

28. **Mr. Avtonomov** said that, notwithstanding the marked decline in the ethnic minority population in the State party, he would be interested to know of the factors driving the decrease in the ethnic Georgian population.

29. Several ethnic groups had been exiled from the Soviet Socialist Republic of Georgia by the former Soviet Union in the 1940s and, while some of those groups had been repatriated and granted Georgian nationality, the State party still refused to recognize that groups such as the Meskhetian Turks had also been forcibly removed from their land on the basis of their ethnicity. The Committee noted with concern that the law on the repatriation of persons exiled from the Soviet Socialist Republic of Georgia by the former Soviet Union made no reference to the Meskhetian Turks and that the State party had not yet initiated their repatriation. He urged the State party to take measures to correct that historical injustice.

30. According to the State party's report, 5,841 persons had applied for repatriate status under the aforementioned law. However, the report did not specify the ethnic groups to which those persons belonged or the reasons for their exile. Furthermore, the fact that only 1,349 persons had been granted that status begged a number of questions, such as why so few applications had been approved given the number of exiled persons living outside the State party's territory and on what grounds the remainder had been rejected.

31. Lastly, he asked whether the State party had devised a programme of activities to commemorate the International Decade for People of African Descent.

32. **Mr. Kut** said that he was grateful to the Office of the Public Defender (Ombudsman) of Georgia for its excellent report. It was frank and comprehensive and had helped the Committee greatly in its consideration of the situation in the State party.

33. In its previous concluding observations (CERD/C/GEO/CO/4-5), the Committee had requested the State party to provide information within a year, i.e., by September 2012, on its follow-up to the recommendations contained in paragraphs 17 (the situation of the Roma), 21 (the situation of non-citizens and stateless persons) and 22 (access by asylum seekers to health care, education and employment). The State party had not done so. The Committee had found that surprising as the follow-up to the 2005 concluding observations had been provided on time. He asked the State party to pay more attention to follow-up on concluding observations in the future.

34. Having participated in the recent discussions on Georgia organized by the European Commission against Racism and Intolerance (ECRI), he had noted that one issue that had been raised in the Committee's previous concluding observations was still giving rise to concern, namely the question of racism in political discourse and the media. The Public Defender's report showed that there was a legal framework in place to address the problem

but there was no indication that it was being applied through the courts, for example. The Committee would welcome some information in that regard.

35. With regard to the Meskhetian Turks, he said that fewer than 6,000 had applied for repatriate status, a very small proportion of the approximately 120,000 who had originally been deported. Of those, an even smaller number, some 1,300, had been granted citizenship between 2011 and 2014. Under the relevant regulations, they must renounce any other citizenship they might have on acquiring Georgian citizenship. Did that apply to other Georgian citizens as well? Did dual citizenship not exist in Georgia, and if it did, why should that particular group not be permitted to retain their other citizenship?

36. **Mr. Kemal** said that the delegation's opening statement showed how the State party's legislative machinery had been strengthened since 2011, notably with the adoption of the Law on the Elimination of All Forms of Discrimination in 2014. He was concerned, however, at the fact that implementation of that law was not as effective as it ought to be, for example in respect of acts of intolerance and violence against Muslims. The Committee did not normally address religious discrimination per se, but it did take an interest in discrimination based on descent or comprising an ethno-religious element. Some of the actions reported could constitute hate crimes or could seriously offend that sector of the State party's population. The Committee would like the Government to take notice and apply its own laws. It was important to investigate such acts and hold those responsible to account, and to provide compensation for harm. Long-term measures should be put in place to develop religious tolerance.

37. He suggested that the Government should look closely at the Public Defender's report and recommendations. It was one of the best reports the Committee had ever received from a national human rights institution. It was a demonstration of the Ombudsman's independence.

38. He would like to know if it was correct that the Georgian Orthodox Church was granted tax exemptions, which was not the case for other religious organizations. Among other things, the Public Defender's report mentioned the need for long-term education programmes for bilingual teachers of minority languages and effective mechanisms to inform minorities about civil integration and ethnic relations in a language they understood, as well as the need to ensure representation of national minorities in the central Government. It also recommended that a law on international protection for internally displaced persons should be adopted.

39. **Ms. McDougall** said that she would appreciate some statistics that might reassure the Committee that crimes involving persecution of Muslims were being prosecuted and that victims were aware of that fact. She would also appreciate an explanation of the term "civil integration", which was used throughout the State party's report.

40. The Convention covered the notion of indirect discrimination, a form of discrimination that was not necessarily intentional. It encompassed institutional discrimination, and also structural barriers in society that were effectively discriminatory. In that context, she was interested in the issue of language as it affected national minorities, who were unable to access institutions if they did not speak Georgian, and with whom the Government could not communicate fully. There were issues relating to schooling: when should education in the mother tongue give way to education in Georgian to enable students to master that language? Others related to employment: how could members of minorities enter the civil service, for example, if they could not pass a test in Georgian? She would appreciate the delegation's thoughts on the question of language as a structural barrier.

41. It would be useful for the Committee to receive disaggregated data showing the number of Afro-descendants in the population.

42. **Ms. Hohoueto** said that the new law on discrimination mentioned only "different forms" of discrimination; she would like to know what definition of discrimination was applied. She noted that, according to paragraph 83 of the State party's core document (HRI/CORE/1/Add.90/Rev.1), international treaties signed by Georgia that were not contrary to the Constitution prevailed over domestic law. She wondered why the State party might wish to ratify any treaties that were contrary to its Constitution.

43. According to paragraph 103 of the State party's report, there had been no complaints under articles 142 or 142-1 of the Criminal Code. That might not indicate an absence of discrimination but could reflect a lack of information among the general public. She would appreciate statistics regarding complaints under other articles of the Code and any action taken, disaggregated by ethnic group. She noted that, in 3 of the 33 cases of discrimination on religious grounds referred to, those involved had been "diverted from criminal liability". She would like to know what that meant.

44. With regard to the requirement for displaced persons seeking Georgian nationality to demonstrate that they had renounced any other citizenship, she would like to know if the delegation really believed that persons who had been displaced under the old Soviet regime would be able to produce the necessary documents. The requirement appeared to be an obstacle to obtaining citizenship.

45. **Ms. Shepherd** said that the State party had become a bridge for migrants from Africa, some of whom left Georgia to go on to Europe, while others stayed. Apparently it was hard for them to find employment, even if they were highly qualified, or housing. In some cases footballers from African countries were enticed to Georgia with the promise of joining clubs there but were then stranded and, if they had entered the country illegally, could find themselves in prison. She would therefore like to know how many Africans were living in the State party and how their rights under article 5 of the Convention were ensured.

46. She understood that a new visa regime had been introduced in September 2014 but had had a disproportionate impact on non-European citizens, who were being charged a fee for entry at the border. She would like to know if there were any plans to waive the visa requirement for vulnerable people wishing to enter the country.

47. According to the table in paragraph 119 of the report, members of five ethnic minorities were employed in the Ministry of Internal Affairs. She would like to know what persons were comprised in the sixth category, "Other".

48. From the figures given in annex II to the report, she noted that it was not until 2013 that a small number of persons with humanitarian or refugee status from African countries had been mentioned as having entered the country. Did that mean that not many Africans were coming to Georgia or that not many were admitted? Perhaps more recent figures might show more people coming from African countries.

49. **Mr. Yeung Sik Yuen** said that the State party should update its core document, which dated from 1999. Meanwhile, looking at paragraph 78 of the core document, he noted that judges were elected for not less than 10 years. He would like to know whether that implied that the length of tenure might vary from judge to judge, i.e., that some might serve for 10 years but others for longer. No retirement age was mentioned: could that vary also? Could a judge who had been appointed for 10 years be reappointed for a further term? The answer to that question might have a bearing on the question as to whether the judiciary was truly independent. He would like to know how many judges there were and whether they represented a cross-section of Georgian society. Did any judges belong to national minorities, particularly in regions where minorities lived in large numbers?

50. On the matter of forcibly displaced persons referred to in paragraph 143 of the report, he calculated that, allowing for the 1,349 applications for repatriate status processed and

approved between 2011 and 2014, it would take 10 years to process the more than 4,000 applications that remained outstanding. The current applicants were probably the great-great-grandchildren of those originally displaced, and in 10 years another generation would pass. He would welcome the delegation's views.

51. **Mr. Marugán** said that he would like to know if all the information about police human rights training given in paragraphs 111 to 117 of the report was up to date. He was not clear about how the police were trained in identifying particular offences and whether training was given only to new recruits, on induction, or also to experienced officers. He would like to know exactly how the Public Defender was involved in police training and whether NGOs and other institutions also participated.

52. What statistical data were available on the dissemination of ideas based on racial hatred and incitement to racial discrimination? How many cases had there been? How were intolerant remarks made by senior politicians or officials punished? Many such incidents occurred on the Internet. He would like to know if there were special units of the police or prosecutors' offices responsible for identifying such cases, which required special training.

53. According to paragraph 21 of the report, the Law on Broadcasting prohibited the airing of programmes that promoted discrimination against persons or groups on various grounds, and the Georgian Public Broadcaster was obliged to reflect the country's ethnic, cultural, linguistic and religious diversity. He would like to know if there were specific examples of programmes being banned, what independent oversight bodies existed and what penalties they were able to impose.

54. He wished to know what body was responsible for implementing article 2 of the Labour Code, which prohibited labour discrimination, whether that body was independent and how many cases of discrimination had been brought before the courts. The delegation should also state whether it was true that labour inspections were concerned solely with health and safety issues, whether domestic legislation prohibited discrimination in recruitment and selection, and what measures were taken to punish discrimination and incitement to hatred in sport.

55. **Ms. Li** Yanduan, while commending the State party on the progress that it had made in implementing the Convention, said that she would appreciate further information on efforts to facilitate the inclusion of ethnic minorities, to promote their enjoyment of economic, social and political rights and to guarantee their participation in decision-making processes. She asked what specific steps were being taken to combat hate speech against minority groups and invited the State party to update its common core document (HRI/CORE/1/Add.90/Rev.1).

56. **Ms. Totladze** (Georgia) said that an updated version of the core document had been finalized with the cooperation of the Ministry of Foreign Affairs and would be made available in the near future.

57. **Ms. Ghogheliani** (Georgia) said that, in recent years, both the total population of Georgia and the number of persons belonging to ethnic minorities had decreased. The largest minorities were Azerbaijanis, who accounted for 6.3 per cent of the population, and Armenians, who made up 4.5 per cent. Azerbaijani and Armenian communities were concentrated in the regions of Samtskhe-Javakheti, Kvemo Kartli and Kakheti. Other, smaller minorities were generally better integrated. Between 2002 and 2014, the number of Kists had fallen to 5,700, while the number of Roma had grown from 472 to 600. More detailed statistics were available on the website of the National Statistics Office.

58. In 2015, the Government had adopted the State Strategy for Civic Equality and Integration, and an accompanying action plan for the period from 2015 to 2020. The task of

implementing the Strategy had been assigned to the Office of the State Minister for Reconciliation and Civic Equality, and to an inter-agency commission.

59. The aim of the Strategy was to improve the situation of ethnic minorities in Georgia with regard to participation in civic and political life, access to information and the media, social and economic conditions and opportunities, access to high-quality education and the preservation of cultural identity. Special attention was paid to enhancing participation in decision-making processes and access to public services, including through the removal of language barriers. The Strategy, of which gender mainstreaming was a key component, also envisaged the protection of the cultural and linguistic rights of smaller minorities and support for the integration of the Roma.

60. As part of the Strategy, the Government was committed to providing free court interpretation services and discussions were under way on the establishment of public advisory councils, which would be tasked with, inter alia, highlighting important issues for ethnic minorities during decision-making processes and evaluating the impact on minorities of government decisions and programmes.

61. Steps were being taken to amend legislation governing civil service internships in order to create more opportunities for students belonging to ethnic minorities. Agencies under the auspices of the Ministry of Internal Affairs had recruited members of the Belarusian, Greek, Jewish, Lithuanian and Polish minorities, among others. The national police and defence academies, which were open to ethnic minorities, had introduced Georgian language courses and there were master's programmes on the elimination of racial discrimination and on policing in a multi-ethnic society.

62. Seven members of Georgia's Parliament belonged to ethnic minorities and, in the regions of Samtskhe-Javakheti and Kvemo Kartli, Armenians and Azerbaijanis, respectively, were proportionally represented on local councils. Minorities were well represented within the civil service and the Government was working with political parties to promote civic integration and to ensure the inclusion of minorities in party lists. The full and equal participation of minorities in elections was guaranteed, in part as a result of the establishment of a working group on minority issues within the Central Election Commission. The duties of the working group included providing minorities with all necessary election information in their native languages and raising awareness of election procedures, particularly among women and young people. The Commission also gave grants to civil society organizations that were engaged in efforts to raise awareness among ethnic minorities.

63. Between 2012 and 2015, 275 members of the Roma community had been registered, afforded appropriate legal status and offered free legal advice. Steps were being taken to register the remaining members of the community, some of whom preferred to remain in isolation. Special educational programmes had been developed for Roma children and, between 2014 and 2015, the number of such children who were enrolled in State schools had increased from 88 to 155. Work was also carried out with Roma parents and a thematic working group on the Roma had been created within the inter-agency commission responsible for implementing the State Strategy for Civic Equality and Integration.

64. **Mr. Jashi** (Georgia) said that a package of legislative amendments aimed at improving the situation of street children had been approved at second reading by Parliament. Under those amendments, homeless children would be provided with identity documents free of charge. A number of programmes were already in place to guarantee the participation of street children in sports and other cultural and educational activities.

65. Under a project for vulnerable children that was partly funded by the European Union, three mobile teams had been established in Tbilisi and two day-care centres, two crisis intervention centres and two training centres had been set up. The aim of the project

was to provide immediate support to street children with the ultimate goal of caring for them under the existing child protection system or of reintegrating them into their biological families. Between 2014 and 2015, 536 children living and/or working in the streets had received assistance. A total of 274 had been sent to day-care centres or shelters, of whom 25 per cent had been members of the Roma community.

66. **Ms. Jokhadze** (Georgia) said that all children in Georgia were provided with free primary and secondary education, and that members of ethnic minorities were taught in Georgian and in their native language. The Government had drafted an educational policy document for ethnic minorities in which it had developed the concept of bilingual education. The national curriculum was taught in several minority languages, including Ossetian and, from 2016, Chechen.

67. Pursuant to a bill that was being discussed in Parliament, preschool education was inclusive and open to all. Once the bill was adopted, State institutions would have a duty to ensure that the preschool education system was equipped to cater to all children, regardless of their ethnicity.

68. From 2016, students from ethnic minorities would be allowed to sit vocational school entrance exams in their mother tongue. Successful applicants would subsequently be able to take intensive Georgian language courses to enable them to pursue further education. The Ministry of Education and Science had drawn up a programme for the social inclusion of all children, including members of the Roma community, one of whom had recently become the first to enrol in a vocational training programme in Georgia.

69. In 2003, the Ministry had drafted a policy paper on the education of children not in the school system and, since 2015, had been developing education modules for street children that would be taught in day-care centres throughout the country. It was also providing training to teachers and parents in the regular school system on how to deal appropriately with former street children.

The meeting rose at 6 p.m.

United Nations CERD/C/SR.2433

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
12 May 2016

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2433rd meeting
Held at the Palais Wilson, Geneva, on Tuesday, 3 May 2016, at 10 a.m.

Chair: Mr. Calí Tzay

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined sixth to eighth periodic reports of Georgia (continued) (CERD/C/GEO/6-8 and CERD/C/GEO/Q/6-8)

1. *At the invitation of the Chair, the delegation of Georgia took places at the Committee table.*

2. **Mr. Beltadze** (Office of the Public Defender of Georgia) said that priority areas in the work of the Public Defender of Georgia included the effective protection of ethnic and religious minorities, the fight against all forms of discrimination and xenophobia and the fostering of civic integration. The coverage of the Law on the Elimination of All Forms of Discrimination extended to administrative bodies, natural persons and legal persons; the Law had also introduced the concept of direct and indirect discrimination and prohibited the incitement of discriminatory actions.

3. Despite its importance, however, there were some essential gaps in the Law. For example, unlike in the case of public agencies, private-law entities and individuals were required to provide information about hearings to the Public Defender. Proposed amendments to the Law had been submitted to Parliament by the Public Defender but had not yet been considered by the competent parliamentary committees. Failure to adopt the amendments would pose serious obstacles to the fight against discrimination and threaten the effective implementation of the Law.

4. Some minor positive steps had been taken regarding the protection of national minorities and the fostering of civic integration, such as the adoption of the State Strategy for Civic Equality and Integration and accompanying action plan for 2015-2020. Full engagement in civil and political life for ethnic minorities remained a challenge, however. National minorities were poorly represented in the central Government, though the situation was different at the local level in regions with large minority populations. Despite universal agreement on the need to create an effective system for providing information to national minorities, not much had changed in that regard.

5. The State had failed to respond adequately to acts of religious intolerance. Another challenge was the inability of ethnic Georgians residing in the Gali District to exercise their right to an education in their native language. Given that Abkhazia was still occupied by the Russian Federation, the latter was primarily responsible for that infringement of the right to education. Another significant challenge was the protection of the rights of the Roma, including their access to education, health care and social security.

6. The Public Defender had made repeated recommendations and proposals to government bodies to, inter alia, carry out awareness-raising campaigns on discrimination, develop a culture of religious tolerance, amend the unequal tax regime for religious groups, and develop effective mechanisms for informing national minorities about issues of importance to them. The Public Defender was of the view that implementation of those recommendations was necessary to ensure the effective implementation of the Convention.

7. **Ms. Zaalishvili** (Georgia) said that the correct collective term for all the persons forced into exile during the 1940s was "Muslim Meskhetians", not "Meskhetian Turks", as the latter term was too narrow and did not encompass all the different ethnic groups affected.

8. A draft action plan on the repatriation of such persons had been completed; it would be submitted to various experts for their comments and approval and would then be submitted to the Government. Under that action plan, the Ministry of Internally Displaced

Persons from the Occupied Territories, Accommodation and Refugees would identify the needs of returnees and the resources available to meet those needs. Integration measures such as simplified procedures for the importation of goods and the financing of entrepreneurial endeavours by returnees would be carried out. Returnees would be guaranteed access to information, housing and education, including access to Georgian language courses. They would also be eligible for simplified procedures to acquire Georgian citizenship.

9. A number of conferences, workshops and other awareness-raising activities had been conducted in cooperation with NGOs to highlight the situation of the returnees. Under the draft action plan, further activities were planned both to raise awareness among the general population and to inform the returnees about their legal situation and the integration programmes available to them.

10. The "Council of Elders" established in 2011 reviewed applications for forcibly displaced person status only in cases where applicants did not hold documents proving their displacement. Muslim Meskhetians had been given more than two years to apply for such status, and the Government had twice extended the application deadline. The individuals mentioned at the previous meeting who had been denied repatriation had migrated from Georgia in 1934 of their own free will. They were therefore not covered by the relevant law, which dealt only with persons forcibly deported from the Soviet Socialist Republic of Georgia in the 1940s.

11. A total of 494 such persons had applied for Georgian citizenship before the deadline of 1 January 2010, and all of those applications had been accepted. In order for those persons to acquire Georgian citizenship, they must renounce citizenship of their current country of residence. The governments of those countries of residence were solely responsible for establishing procedures for the renunciation of citizenship, and the authorities of Georgia would not interfere in that process.

12. **Mr. Giorgadze** (Georgia) said that the Law on the Legal Status of Foreigners and Stateless Persons, adopted in 2014, set out the rights and freedoms of foreigners, which were the same as those of Georgian citizens with the exception of the right to participate in political associations, elections and referendums. Non-discrimination was a fundamental principle of the State's migration policy, and any discrimination or degrading treatment of foreigners was prohibited. The Law had also introduced the principle of non-refoulement into national legislation for the first time.

13. The Migration Strategy of Georgia 2016-2020 had been developed in cooperation with NGOs, international organizations and the Public Defender. The integration of migrants was one of the main principles of the strategy, which also provided for language and culture courses and vocational training for migrants. Detailed information about the budget allocations for implementation of the Strategy and the associated action plan were available online.

14. A special working group had been established in 2016 to coordinate efforts to integrate migrants. The working group had been tasked with preparing recommendations and legislative proposals on the issue. It was chaired by the Minister of Labour, Health and Social Affairs and included representatives of several other ministries and NGOs. For the first time in the country's history, a special budget had been allocated for that work in the amount of 250,000 lari.

15. The number of countries whose nationals needed a visa to enter Georgia had not changed with the adoption of the Law on the Legal Status of Foreigners and Stateless Persons. In fact, the Law had introduced simplified procedures in the form of an electronic visa. Since 2012, a total of 2,332 nationals of African countries had entered Georgia legally.

16. Georgia was one of few States that was a party to both the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. There were currently 523 stateless persons living in Georgia. That number had dropped significantly since 2011, when it had stood at 1,958. Stateless persons were entitled to free legal aid on an equal footing with all other persons under the State's jurisdiction. Reforms introduced in 2014 had provided for various mechanisms to reduce and prevent statelessness. For example, a person could be denied Georgian citizenship only if it was guaranteed that he or she would be granted citizenship by another State, and abandoned infants were automatically recognized as Georgian citizens, as were children born to parents who were both stateless.

17. A State action plan to reduce statelessness was currently being developed on the basis of a legal framework that facilitated naturalization. Under ordinary citizenship procedures, applicants must have resided in Georgia for five years, have a good knowledge of the country's language, history and legal system, and possess property or be employed or engaged in entrepreneurial activities in Georgia. Under the simplified procedure, which was available to persons married to a Georgian citizen, the residency requirement was reduced to two years and the property and employment requirements were waived.

18. **Ms. Zaalishvili** (Georgia) said that, under legislative reforms introduced in 2015, asylum seekers could not be penalized for their illegal entry into or presence in the country. Integration programmes were in place for asylum seekers, refugees and persons granted humanitarian status; they were entitled to health care and had access to both preschool education and general education, as well as special language courses. They would also have access to funding for vocational training under a memorandum of understanding signed in 2016 between the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees and the Ministry of Education and Science. Furthermore, they benefited from free legal aid, simplified naturalization procedures, financial allowances and an integration strategy.

19. Asylum seekers were either housed in reception centres or provided with housing benefits. In the light of the recent amendment of article 25 of the Law on Refugee and Humanitarian Status, the national authorities must indicate the grounds for the rejection of asylum applications, ensuring a balance between protection of the rights of asylum seekers and national security. Asylum seekers were informed of those grounds in their mother tongues and could lodge appeals in that regard. The courts and the Public Defender of Georgia could access information held by State security agencies on the application process. Georgia had fully implemented the recommendations on asylum issues made by the European Union as a part of the Action Plan on Visa Liberalization. The draft law on international protection had been developed in close cooperation with the Office of the United Nations High Commissioner for Refugees, was designed to replace the Law on Refugee and Humanitarian Status, introduced the additional category of "temporary protection status holder" and contained provisions on family reunification.

20. During the period 2014-2016, the State party had received 91 asylum seekers from Egypt and 32 from Côte d'Ivoire.

21. **Mr. Giorgadze** (Georgia) said that, although the Constitution did not make any provision for dual citizenship, it could be granted by the President of Georgia under exceptional circumstances.

22. **Ms. Kvirikashvili** (Georgia) said that trainee and serving police officials and public prosecutors received training on discrimination-related issues. Since 2010, five seminars had been held on tolerance and minority cultures. During the period 2014-2015, approximately 200 public prosecutors and police and detention centre officials had received

training on the prohibition of discrimination and related official written material had been updated and brought into line with recent legislation in that field.

23. In 2015, the Ministry of Internal Affairs had designed a year-long Georgian language programme for members of ethnic minorities. Since 2007, 305 Azerbaijani and Armenian police and border officials had been taught Georgian. In 2015, a number of anti-discrimination awareness-raising programmes for staff of the Chief Prosecutor's Office had been carried out by representatives of the Public Defender of Georgia. The Chief Prosecutor's Office and the Office for Democratic Institutions and Human Rights had signed a memorandum of understanding on the implementation of a training programme on hate crimes. A Council of Europe e-learning platform was currently being used to deliver a three-month anti-discrimination course to a group of 20 public prosecutors and investigators.

24. Training was being provided to police officials on cybercrime, with the support of the Council of Europe and the embassy of the United States of America.

25. Under amendments to the Criminal Code introduced in 2012, discriminatory actions based on race, religion, nationality or ethnic origin were defined as aggravating circumstances in relation to certain offences. The Ministry of Internal Affairs had adopted updated guidelines to ensure the prompt investigation of offences involving discrimination. The Chief Prosecutor's Office had recently issued recommendations on the implementation of Criminal Code provisions relating to the investigation of hate crimes and the collection of evidence, which had been examined by the Council of Europe. In 2015, three individuals had been prosecuted for offences of racial intolerance. Investigations into a number of cases of religious intolerance targeting the Muslim community were ongoing. Public incitement to violence on the grounds of religious belief or ethnic origin had been criminalized. Georgian, Russian and Azeri-language materials would be published and disseminated on the issue of early marriage and related criminal legislation.

26. **Ms. Kvatchadze** (Georgia) said that Georgian judges hearing cases of discrimination referred to the relevant international instruments, national legislation and European Court of Human Rights case law. Working with a number of NGOs and the Council of Europe, the High School of Justice delivered training modules on article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 12 to that instrument to justice system actors. The Constitutional Court of Georgia heard cases of racial discrimination. The national courts closely followed cases of discrimination heard by the European Court of Human Rights. A round table on the prohibition of discrimination and its definition in domestic law had recently been held and had been attended by representatives of the Supreme Court and experts from the Council of Europe. As a result of the introduction of new anti-discrimination legislation, the number of civil and administrative cases concerning discrimination on the grounds of religion had increased.

27. Under article 34 of the Organic Law on General Courts of Georgia, candidates for selection as judges must be at least 30 years of age, hold a master's degree, have at least five years' experience in the legal field, speak Georgian, have passed the judges' examination, have completed the relevant High School of Justice training course and be registered on the justice trainee qualifications list. Under article 26 of the Law, district court and court of appeal judges were appointed for a term of three years, upon expiry of which they could be confirmed in the post for an indefinite period following assessment of their performance in office. There were currently 16 judges at the level of the Supreme Court, 252 at other levels and a further 116 completing their probationary period. When filling in their applications, prospective judges were required to indicate their citizenship but not their national or ethnic origin.

28. **Ms. Ghogheliani** (Georgia) said that there was no internationally recognized definition of the term "national minority". The Framework Convention for the Protection of National Minorities took into account national practice and context in that regard. All persons resident in Georgia who held Georgian citizenship and participated in the national development process were Georgian by nationality. However, they might also belong to various ethnic groups. Ethnic minorities were groups made up of Georgian citizens who differed from the majority of the national population in terms of language, culture and ethnic identity, had lived for a long period of time in the national territory and resided in compact settlements or were dispersed across the country.

29. **Ms. Jaliashvili** (Georgia) said that, in 2015, the State Agency on Religious Issues had set up a council made up of representatives of all religious communities with a presence in Georgia to discuss issues relating to religion. Under a national action plan on the protection of human rights, during the period covered by Georgia's report to the Committee, workshops for 120 local level public officials had been held across the country on a number of issues, including xenophobia, secularism, discrimination on the grounds of religious belief, tolerance and religious neutrality and freedom. Guidelines for public officials on secularism and religious neutrality would be published in the near future. Cooperation agreements had been signed between the Agency and a number of higher education institutions relating to efforts to promote a culture of tolerance among young persons, including through the involvement of academics and representatives of religious groups. Tax regulations would be amended to ensure that all legally registered religious organizations were exempt from paying income tax and value added tax on an equal footing with the Patriarchate of Georgia.

30. **Ms. Vardzelashvili** (Georgia) said that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees had undertaken the registration of internally displaced persons (IDPs) in order to better address their housing needs. Between 2013 and 2014, more than 250,000 IDPs across the country had been registered. The Ministry had provided 30 per cent of all registered IDP families with durable housing solutions but more than 50,000 families were still in need of housing. A decree issued by the Ministry in 2013 stipulated that housing units provided to IDPs should remain the private property of such persons even after they returned to their places of origin. Ensuring the private ownership of housing units for IDPs was considered a priority for their integration. Consequently, more than 10,000 IDP families in total had been granted private ownership of housing units.

31. Moreover, the Ministry was responsible for carrying out construction and restoration work on housing: in 2015, more than 1,000 apartments purchased by the Ministry from construction companies had been provided to IDP families in both Tbilisi and other regions of the country. The Ministry also purchased apartments from private landlords. In 2015, a pilot mortgage loan repayment project had been initiated. Almost 50 applicants had received a partial mortgage loan in 2015 and the project was continuing. The Ministry sought to support the settlement of IDPs in rural areas and had implemented certain rural housing programmes for that purpose. In 2014-2015, the Ministry had purchased more than 700 rural housing units. In addition to housing, IDPs living in rural areas were able to use land for arable farming as a means of self-sufficiency.

32. The Ministry intended to close down temporary IDP housing units. There were 97 registered units in Georgia. Since 2012, almost 40 units had been closed down and more than 700 families had been provided with alternative durable housing solutions. The Ministry hoped to close all registered units in Tbilisi by the end of 2016.

33. **Mr. Giorgadze** (Georgia), referring to the prohibition of organizations that promoted racial discrimination, said that legal entities could be classified on the basis of whether they were public or private organizations. All legal entities had to be registered

with the authorities and under the registration procedure non-profit private-law entities were required to submit information regarding the purpose of their activities. Registration could be refused if the entity intended to pursue illicit activities.

34. In accordance with article 4 of the Organic Law on Suspension and Prohibition of Activity of Public Unions, a court could outlaw any organization that threatened the constitutional order, independence and territorial integrity of Georgia, or incited racial hatred. Under the Criminal Code, any violation of human equality and any act of racial discrimination, as defined by the law, was punishable. Furthermore, the Criminal Code stipulated that any legal entity violating the provisions of the Code could be subject to a fine or the termination of its activities.

35. **Ms. Crickley** (Country Rapporteur) said that she would like to know when the amendments submitted by the Public Defender to the 2014 Law on the Elimination of All Forms of Discrimination would be approved and implemented. She asked whether ethnic minorities were able to receive news of current affairs in their own language through the media; whether plans had been made to protect the small Roma community in Georgia; when exactly the State Strategy for Repatriation of Forcibly Displaced Persons would be actively implemented; whether the State party would authorize its nationals to have dual citizenship in order to maintain a sense of identity, particularly for those living in disputed territories; whether Georgia would consider allowing foreigners to vote after a certain period of residence; how anti-discrimination legislation was being implemented by the labour inspectorate to promote the employment of ethnic minorities in the Pankisi valley; and whether the provisions in place to prevent early marriage and domestic violence were being implemented in a sensitive manner.

36. **Ms. Ghogheliani** (Georgia) said that the Public Broadcaster was fulfilling its obligation to reflect ethnic, cultural, religious and linguistic diversity in the television programmes it aired. The civic integration strategy emphasized the need to improve access to the media for minority groups. Television news broadcasts were aired daily at prime time in five minority languages: Abkhaz, Ossetian, Armenian, Azeri and Russian. A television programme that focused on national and international developments for Russian-speaking ethnic minorities had started airing in 2014. A weekly talk show on national minority issues had been broadcast regularly until October 2015 and a contract to continue the programme was currently being negotiated. A documentary series on the history of minority ethnic groups had aired in 2014. Current affairs programmes in five minority languages were broadcast daily on the radio and once a week in Kurdish. Newspapers published in Armenian and Azeri were distributed in regions of compact settlement, as well as in a number of cities across Georgia.

37. The Government was continuing the process of registering Roma which had begun in 2010. The Ministry of Justice held consultations with members of the Roma community and had registered 275 of them. Efforts were made to ensure that such registered Roma had the appropriate legal status and access to free legal aid. Steps were being taken to promote the education of Roma children within public schools. The socioeconomic integration of the Roma community was a topic being discussed within the State Interagency Commission. Non-governmental organizations and representatives from the Roma community needed to be involved in such discussions.

38. **Ms. Jaliashvili** (Georgia) said that the package of amendments submitted by the Public Defender had not been supported by the Parliament. The Government did not at present have any information regarding whether the Office of the Public Defender would resubmit the package to Parliament for renewed consideration.

39. A labour inspectorate had not existed in Georgia since 2006. During the Soviet era, the Labour Inspectorate had been one of the most corrupt institutions in Georgia and a

decision had consequently been made to abolish it. However, a project had been launched in 2015 to establish a labour department under the Ministry of Labour, Health and Social Affairs. The department had trained 25 labour inspectors in collaboration with the International Labour Organization (ILO). The labour department also worked on issues of mediation and on promoting the link between human rights and business. However, more time, human resources and financial support were needed to ensure the effective operation of the department.

40. The Prime Minister of Georgia employed an assistant on human rights and gender equality issues. The assistant also chaired the inter-agency council on domestic violence. The council collaborated with a consultancy group composed of non-governmental organizations and international organizations promoting gender equality, such as UN-Women. A special task force had also been established to tackle the issue of early marriage which was a serious problem in the region of Georgia that bordered Azerbaijan. Education and awareness-raising were of paramount importance in efforts to prevent early marriage but more time was needed to change the current situation.

41. **Ms. Dah** said that she would appreciate information on the obstacles to the success of bilingual education in Georgia. Although minority groups were well represented at local levels, that was not the case nationally. Bilingual education would act as a means of ensuring the participation of minority groups at the national level. She asked whether the State party had given any further consideration to ratifying the amendment to article 8 of the Convention.

42. She commended Georgia on being the only country to have brought a case before the International Court of Justice regarding another country's non-compliance with the Convention.

43. **Ms. McDougall** said that she would like to know which categories of the population were not covered by the State party's definition of national minorities and what consequences such persons faced for being excluded from the definition. She would also appreciate statistics on the countries of origin of persons of African descent residing in Georgia, and an explanation as to why the investigations conducted into hate crimes against Muslims in 2012-2014 had not resulted in any convictions. With regard to the representation of minority groups in political bodies, she asked whether there was universal suffrage in Georgia, whether proportional representation was used in the electoral system, and whether Georgia had considered best practices in Europe to address the issue of public participation for minority groups.

44. **Ms. Kvirikashvili** (Georgia) said that the delegation would provide further information in writing on the situation of religious minorities and prosecutions for religious intolerance, for example with regard to Jehovah's Witnesses. Incidents of intolerance against the Muslim community were being investigated and appropriate action would be taken once the investigation was completed.

45. **Mr. Beltadze** (Office of the Public Defender of Georgia) said that there had in fact been prosecutions and convictions for religious intolerance against Jehovah's Witnesses. His Office remained concerned, however, at the lack of investigation of acts of intolerance against the Muslim community in the period 2012-2015, many of which probably warranted criminal prosecution. That situation must be remedied; the best way to encourage victims to come forward and prevent the recurrence of acts of intolerance was to ensure effective investigation of incidents and appropriate punishment of those responsible.

46. **Mr. Giorgadze** (Georgia) said that more than 30 community information centres had been opened nationwide to advise on public services available to local populations, including in occupied areas. The centres had meeting rooms, a library and free Internet and

served as contact points for engagement with youth and the community. No political activities were allowed in the centres.

47. With regard to the ability of foreigners to participate in elections, he said that restrictions in that regard were set out in the Constitution and were generally in line with international practice. He stressed that the new Law on the Legal Status of Foreigners and Stateless Persons included provisions on protection of the social and human rights of those persons. The delegation would provide the Committee with statistical information on persons of African descent, including their numbers, origin and types of residence permit. Most persons of African descent had come to Georgia for studies or employment.

48. **Ms. Totladze** (Georgia) said that her Government was considering ratification of the amendment to article 8 of the Convention. Her Government was of the opinion that the Russian Federation had breached the Convention by virtue of its practices in the Russian-occupied Georgian territories and had brought a complaint to that effect before the International Court of Justice under article 22 of the Convention. However, the Court had found that the complaint was inadmissible since Georgia had not satisfied the procedural preconditions for seisin of the Court. Georgia was currently still pursuing the matter with the Russian Federation at the diplomatic level with a view to reaching a settlement.

49. **Ms. Jokhadze** (Georgia) recalled that the State party had many ethnic minorities scattered across its entire territory. It was therefore essential to identify which groups most needed bilingual education. Minorities in major cities or in a predominantly Georgian-language environment generally spoke Georgian and were well integrated. More isolated areas or areas with a significant minority population required more State support. They must be provided with an educational and social environment that promoted use of the national language.

50. The Ministry of Education and Science provided classes in Georgian up to the end of the secondary cycle and offered special courses in the Georgian language, free of charge, to local government officials, major institutions, school administrators and educational establishments. Courses in English and other subjects, such as management or information technology, were also available free of charge. Every effort was made to promote use of the national language in learning for all ethnic minorities in the school system; instructors also travelled to small villages to teach Georgian to their inhabitants and had provided classes to more than 3,000 persons. The Ministry of Education and Science had prepared a draft plan for bilingual education, including appropriate teaching methods that would ensure the provision of bilingual education for minorities from preschool to higher education.

51. With regard to early marriage and education, she said that the issue was raised in the compulsory curriculum for both public and private schools in the context of discussion of human rights, the rights of the child and respect for culture and diversity. The effects of early marriage on health could be discussed in biology classes and programmes were available to teach the importance of a healthy lifestyle and reproductive health. Teachers received training on early marriage and how to deal with the students concerned and outreach activities were organized with parents, especially in communities where early marriage was common, to increase awareness of the need to eliminate that practice.

52. **Mr. Kut** said that the Committee continued to receive reports of racist discourse at the political level and in the media and he wondered if the State party was truly trying to combat that phenomenon and whether the existing laws were even applied. Furthermore, recalling the Committee's previous concluding observations and its recommendation concerning action to meet the needs and facilitate the repatriation of the Meskhetian Turk community, including compensation for loss of property, he again enquired whether the State party was truly committed to moving forward and assisting that minority.

53. **Mr. Murillo-Martínez** said that he looked forward to receiving more information on efforts to increase the political participation of minorities at the national level, to combat racist and xenophobic discourse in politics and to implement the Criminal Code provisions relating to racial discrimination. More information would also be welcome on training provided to law enforcement personnel and youth on sensitivity to religious minorities and to what extent the State party tried to combat the growing phenomenon of racism on the Internet. He also asked whether the State party had signed the Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

54. **Ms. Zaalishvili** (Georgia) said that a new strategy and action plan for the repatriation of forcibly displaced persons would be adopted at the next session of Parliament and enter into force immediately thereafter. The plan provided for an evaluation of the needs of the repatriated and measures to ensure their integration while respecting their right to maintain their culture, for example through educational programmes. Indicators for success would be identified and monitored. Persons of all ages would be provided with training in the Georgian language, including at all levels of the education system. Job-seekers would have access to government information about employment opportunities and to job counselling. Funds would be made available to help entrepreneurs. Every effort would be made to ensure the integration of young people.

55. The procedures for repatriates to acquire Georgian citizenship had been simplified. She noted that a Council of Elders had been established to assist in assessing the status of candidates for repatriation who did not have the appropriate documents. With regard to compensation for loss of property at the time of deportation, however, she said that Georgia was not responsible for losses incurred before it had achieved independence; that responsibility belonged to the successor state of the Union of Soviet Socialist Republics.

56. **Mr. Giviashvili** (Georgia) said that, while there might be some isolated incidents of racism or hate speech at the political level or in the media, that was not typical of the mainstream political parties and press. Mindful of the need to protect the right to freedom of speech, the State party would work with the Committee to prevent and prosecute abuses of that right and would provide whatever information was available on that issue to the Committee.

57. **Mr. Avtonomov** said that the Meskhetian Turks should have the right to self-identification as a separate ethnic community. He also urged the State party to ratify the amendment to article 8 of the Convention.

58. **Mr. Yeung Sik Yuen** expressed concern that judges had to endure a three-year probationary period before being confirmed in office, which might have a negative effect on their independence. He noted that 116 of 252 current judges were on probationary appointment, a rather high figure, and asked how many judges had been confirmed in their positions over the past five years.

59. **Mr. Marugán** said that the incitement of acts of violence had been criminalized under the reform of the Criminal Code in 2015, yet article 142-1 of the Code likewise criminalized racial discrimination, including incitement of racial hatred. He wondered how those provisions differed and how they were implemented and asked for statistics on any investigations or prosecutions. Information would also be welcome on racist discourse on the Internet and efforts to combat that phenomenon. Since racial discrimination was often practised in the area of employment, he asked for more information on the employment situation of minorities, including in the occupied territories.

60. **Mr. Bossuyt**, noting the informative report prepared by the Office of the Public Defender, congratulated the State party on its support for that Office. He welcomed the information provided by the delegation on the status of foreigners and minorities,

discrimination against Muslims, the situation in South Ossetia and Abkhazia and the unfair special tax status of the Orthodox Church. He did not, however, agree with the Public Defender that there should be some sort of obligation in law for individuals to report incidents of racial discrimination; that would be going too far and in any case would be impossible to enforce.

61. **Ms. Crickley** (Country Rapporteur) thanked the delegation for its openness and engagement with the Committee and urged it to participate fully in the follow-up procedure to the Committee's consideration of its report. She recalled that the Committee's mandate was a broad one and included issues of racial discrimination affecting any person or group, including non-citizens, migrants and asylum seekers. She underscored the importance of effective implementation of the Convention through the development and application in practice of detailed plans, targets and strategies, coupled with mechanisms to evaluate and measure the effects of those plans. It was also important to ensure the active participation of minorities in decision-making processes, in particular with regard to policies that directly affected them.

62. The Committee's forthcoming concluding observations would serve as a guide for further progress towards the elimination of racial discrimination in the State party and should be implemented with a sense of urgency given the possibility of elections being held later in the year.

63. **Ms. Totladze** (Georgia) said that her delegation had welcomed the opportunity to hold a frank dialogue with the Committee. Noting the contribution made by civil society organizations and the Office of the Public Defender, she expressed the hope that more civil society representatives would be present for the Committee's consideration of the next Georgian report. Her delegation would provide additional information in writing to complete its responses to the Committee's questions. Her Government would continue its efforts to implement the Convention and the Committee's recommendations in cooperation with all stakeholders.

64. **The Chair** thanked the delegation of Georgia for its frank and open dialogue with the Committee.

The meeting rose at 12.55 p.m.

United Nations CERD/C/SR.2434

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
13 May 2016

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2434th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 3 May 2016, at 3 p.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventh to ninth periodic reports of Azerbaijan

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventh to ninth periodic reports of Azerbaijan (CERD/C/AZE/7-9 and CERD/C/AZE/Q/7-9)

1. *At the invitation of the Chairperson, the delegation of Azerbaijan took places at the Committee table.*

2. **Mr. Khalafov** (Azerbaijan), introducing his country's combined seventh to ninth periodic reports (CERD/C/AZE/7-9), said that the report had been prepared by a working group comprising representatives of relevant government ministries and agencies. The national human rights institution (Ombudsman) and representatives of non-governmental organizations (NGOs) had also been involved.

3. The provisions of the international treaties ratified by Azerbaijan were incorporated into the domestic legal framework and could be applied directly. Azerbaijani law guaranteed equality before the law regardless of, inter alia, race, nationality, religion, language, sex or origin and prohibited racial discrimination. The Criminal Code prohibited acts committed with the aim of inciting national, racial or religious hatred, as well as preferential or inferior treatment on the basis of national, racial or religious origin.

4. Crimes committed on racial grounds were rare in Azerbaijan; in 2015 only one person had been convicted of such a crime. A number of measures had been taken to implement the national action plan for the protection of human rights and to protect and develop the cultural heritage of the country's national minorities. Those measures were aimed at fostering a culture of respect for the law and for human rights in Azerbaijani society. All the religious minorities living in Azerbaijan could meet and worship without restriction. Numerous languages, including Russian, Georgian, Hebrew, Talysh, Avar, Udi, Lezgian, Tsakhur and Kurdish, were taught in schools in the 14 regions of the country. There were cultural centres and other public organizations for national minorities and radio and television broadcasts and books, and newspapers were available in their languages. The Office of the Ombudsman and the competent government agencies had organized seminars, round tables and other activities to raise awareness of the prohibition of discrimination in regions with a large national minority population.

5. The Baku International Multiculturalism Centre sought to promote multiculturalism through study of the question of tolerance for religious and cultural diversity and of the cultural heritage of the various regions. In an effort to preserve and promote the tradition of multiculturalism in the country, 2016 had been declared the "Year of Multiculturalism". The Office of the State Adviser on Multinational, Multicultural and Religious Affairs had been created by presidential decree in February 2014. In addition, Azerbaijan had hosted the World Forum on Intercultural Dialogue on several occasions and the United Nations Alliance of Civilizations Forum in April 2016. The Heydar Aliyev Foundation was making a considerable contribution to the development of multiculturalism and the promotion of tolerance at home and abroad, including through a project to rebuild and restore a large number of mosques, churches and temples, both in Azerbaijan and in Europe.

6. Improvements made to the country's judicial infrastructure and the creation of an Internet portal and information system known as "E-court" had served to improve the legal assistance provided to citizens, boost the efficiency and visibility of legal services and enhance oversight over the execution of court decisions. Ten regional departments of the Ministry of Justice and a number of regional centres for legal consultation had also been set up.

7. The Government remained committed to combating corruption. In 2015, 200 cases involving 295 individuals accused of corruption-related offences had been brought before the national courts. The State Agency for Public Service and Social Innovations had launched the "ASAN Service" with a view to increasing the effectiveness of public service delivery, building confidence in State structures, promoting transparency and combating corruption. More than 200 public services from different government agencies could be delivered through the ASAN service centres.

8. The third national action plan to promote the socioeconomic development of the different regions of the country, including those with a large national minority population, spanned the period 2014-2018 and included measures intended to improve infrastructure and social services, increase investment, generate employment and reduce poverty. The measures taken thus far had reduced poverty and spurred growth in non-oil industry and employment, as well as the construction and renovation of schools and hospitals. In spite of the global financial crisis, the country's gross domestic product had grown by 1.1 per cent in 2015. A strategic road map for the national economy had been adopted in March 2016.

9. The third national action plan to combat human trafficking also covered the period 2014-2018. In 2015, 38 persons had been charged with the crime of human trafficking and 63 victims had been identified, placed in shelters and provided with legal, medical and psychological support. The Government had taken steps to improve domestic legislation on migration. The Migration Code set out the country's migration policy and regulated migration processes and the legal status of foreign nationals and stateless persons in Azerbaijan. In 2015, 181 stateless persons had been granted Azerbaijani citizenship, 73 stateless persons had been granted temporary residence permits and 103 stateless persons had been granted permanent residency in the country. A total of 63 persons had been granted refugee status that year. The Government continued to take measures aimed at improving the social and economic situation and facilitating the social integration of those persons.

10. A total of 94 settlements had been built as part of the national action plan to improve the living conditions and raise the employment rate of refugees and internally displaced persons; 5.4 billion Azerbaijani manats had been allocated for the purpose of providing refugees and internally displaced persons with social protection. To date, 165,000 of the 380,000 internally displaced persons in Azerbaijan had been provided with permanent employment and 200,000 had been provided with temporary employment. A further 3,000 internally displaced persons were attending vocational training courses and 16,000 families were receiving targeted social assistance. Internally displaced persons had also benefited from funds generated by community microprojects and allocated through the National Fund for Entrepreneurship Support. The various initiatives undertaken by the Government had led to a considerable reduction in poverty among internally displaced persons in the space of 12 years. Those persons were exempt from paying for utilities and could receive unemployment benefits and attend secondary and higher education establishments free of charge.

11. In June 2015, the European Court of Human Rights had issued a judgment in the case of *Mr. Elkhan Chiragov and Others v. Armenia*. The case had been brought by six Azerbaijani nationals who had been prevented from returning to their homes and making use of their property in the Lachin district of Azerbaijan, from which they had been expelled in 1992 as a result of Armenian military aggression against Azerbaijan. The Court had found there to be a continuing violation of their property rights, their right to respect for private and family life and their right to an effective remedy, as provided in the European Convention on Human Rights. It had also noted that the ongoing negotiation process within the Minsk Group of the Organization for Security and Cooperation in Europe should not be used to justify violation of the rights of displaced persons, which included the right to

voluntarily return to their homes or places of residence once the reasons for their displacement had ceased to exist. The Court had concluded that, as long as Armenia exercised effective control over the occupied territories of Azerbaijan, it bore responsibility for violation of the rights of Azerbaijani displaced persons and was in breach of the sovereignty, territorial integrity and inviolability of the internationally recognized borders of Azerbaijan.

12. Azerbaijan was unable to fully meet its international human rights obligations in the occupied territories as a result of the ongoing conflict in the Nagorno-Karabakh region. The armed aggression by Armenia against Azerbaijan had led to grave violations of international humanitarian law and human rights, including the extrajudicial execution, mass killing, and torture of civilians. Historical monuments, places of worship, schools and cultural institutions and sacred sites had also been destroyed. The systematic violation of the ceasefire by Armenia could lead to the resumption of armed conflict and create a new wave of displaced persons. By provoking further conflict, Armenia intended to consolidate the occupied territories of Azerbaijan and maintain the status quo. The Government of Azerbaijan called upon the international community to take preventive measures aimed at bringing about peace and the withdrawal of the Armenian armed forces from all occupied territories of Azerbaijan, including the Nagorno-Karabakh region.

13. **Mr. Amir** (Country Rapporteur), noting that the State party report contained no information relating to article 1 of the Convention, said that the guarantees of equal treatment and of the protection of the fundamental rights and freedoms of all citizens, set out in article 25 of the Constitution of Azerbaijan were not a substitute for a definition of racial discrimination in line with that laid down in article 1. The Committee encouraged the State party to adjust its domestic legislation accordingly.

14. The conflict in the Nagorno-Karabakh region was a continuation of the conflict that had taken place between 1991 and 1994, which had led to the departure of nearly the entire Armenian population from Azerbaijan and its replacement by the Lezghis. The lack of a political solution to the armed conflict in the region had stoked ethnic tensions. Some 610,000 persons had been displaced by the conflict in Nagorno-Karabakh and neighbouring territories and were unable to return voluntarily to their home or place of residence in safety. Women and children were among the most vulnerable groups of displaced persons. The Secretary-General of the United Nations had urged both Azerbaijan and Armenia to respect the ceasefire in order to protect the lives of all civilian populations.

15. Although the State party had described the ethnic make-up of its population in its report, it had not provided any information on the mechanisms in place to protect its minorities from discrimination or any statistical data that would enable the Committee to assess the effectiveness of those mechanisms. He recalled that, in its previous concluding observations, the Committee had voiced its concern about significant disparities in the enjoyment of economic, social and cultural rights in the State party, particularly among ethnic groups in rural and remote mountainous areas.

16. The Committee would welcome an explanation of why there were no mechanisms for consulting with minorities. Did the State party in fact engage in dialogue with them? If so, in what way? He invited the delegation to provide information on the rights of minorities under the law or the Constitution, for example with regard to education, employment and the protection of minority languages, and to indicate whether there was a network of State schools where minority languages were taught.

17. With regard to article 4 of the Convention, he would like to know more about the scope of the restrictions on the right to freedom of expression by the media and human rights defenders, the closure of independent newspapers and the withdrawal of local broadcasting permits from certain foreign radio stations. According to information received,

peaceful demonstrations tended to be dealt with primarily by force. He would welcome the delegation's clarifications on that matter.

18. It seemed that the Talysh and Lezghi minorities were more vulnerable than others, to the extent that they concealed their ethnic identity in order to avoid discrimination. He wondered why that was. Notwithstanding the constitutional provisions prohibiting discrimination and official statements on the subject, he was not certain what legislative or judicial mechanisms were in place to effectively protect ethnic minorities. Was there a law that defined and protected minority rights? The State party report referred to policies of non-discrimination, but the provisions mentioned did not reflect the provisions of the Convention. The Criminal Code lacked several elements of article 1 of the Convention. The measures described in paragraph 41 of the report were not special measures in the sense of article 1 (4) of the Convention, and the requirements of article 4 were not mentioned in that paragraph.

19. The Lezghi, the second largest ethnic group in the country, suffered more discrimination than any other, even though the Constitution guaranteed them the same rights and freedoms as all other citizens, including with respect to race, religion, nationality and language. The presidential decree of 16 September 1992 on the protection of the rights and freedoms of ethnic minorities, small minorities and ethnic groups did not guarantee non-discrimination since it contained no proper framework, for example with regard to the use of minority languages. In that context, the regulations governing the matter of language in the mass media stipulated that television and radio stations could broadcast only in Azeri.

20. The situation of women in Azerbaijan was also of concern. They were under-represented in decision-making bodies and at the highest levels of the judiciary. In fact, they seemed to be virtually absent from public and political life.

21. There was a very high proportion of migrant workers in an irregular situation. Their working conditions were inadequate and they had no access to social security. If their employment was terminated they might be obliged to leave the country. Despite the progress reported by the Special Rapporteur on the human rights of internally displaced persons, such persons were still not fully enjoying their rights under the Convention. The provision of permanent housing and the building of new camps with modern equipment could hardly be deemed durable solutions, as the people concerned were, after all, in their own country. He would like to know the Ombudsman's position on that matter. He would also like to know the Ombudsman's position on the conflict that continued to produce displaced persons and refugees. There were now 800,000 Azeri refugees from Nagorno-Karabakh in Azerbaijan. What steps were being taken to promote tolerance and dialogue between the parties to the conflict?

22. He would like to know if any complaints for racial discrimination had been brought before the courts. According to paragraph 33 of the report, there had been none. He would also like to know how the courts worked and what rules of criminal and civil procedure applied in cases of racial discrimination. Were aggravating circumstances taken into account in such cases?

23. Politicians continued to make inflammatory statements, and he wondered whether they were punished. Journalists and human rights activists continued to be arrested, and while some had been acquitted, others remained in prison. He wondered on what grounds they had been convicted. Article 283 of the Criminal Code, on incitement to ethnic, racial or religious hatred or hostilities, had been applied as the basis for the arrests of Novruzali Mammadov, Hilal Mammadov and Eynulla Fatullaev for voicing dissenting opinions on the Nagorno-Karabakh conflict and on the situation of minorities. Hilal Mammadov was a human rights activist, the editor of the only Talysh-language newspaper in the country; he had been sentenced to 5 years' imprisonment and remained incarcerated, in violation of

various human rights instruments. Ramil Safarov, on the other hand, had been granted a pardon.

24. **Mr. Kut** noted that the State party had provided the information requested on follow-up to paragraphs 5, 7 and 15 of the Committee's previous concluding observations in timely fashion, but for some technical reason its reply had not been discussed by the Committee. That information should nevertheless be taken into account in the Committee's dialogue with the State party.

25. **Mr. Avtonomov** said that the high-level delegation sent by the State party demonstrated a very serious attitude to the Convention. In its report, the State party had provided a wealth of detail, but had not separated out its replies to the Committee's previous concluding observations, which made it somewhat difficult for the Committee to see what action had been taken in that respect. He would like to know what the State party's position was on ratification of the amendment to article 8 of the Convention.

26. In the latest census, over 3,500 people had declared themselves stateless. There was a lack of regulation of their status, which meant that they did not necessarily have identity documents. That in turn meant they could not register their children, who were thus deprived of services they needed. Drawing attention to the Committee's general recommendation No. 30, on discrimination against non-citizens, he asked if the State party had any plans to change that situation.

27. **Mr. Khalaf** said that the Convention was designed to provide a legal framework to help the State party to move forward in implementing certain principles in domestic law. He noted that the State party's Constitution contained those principles, but he would like to know what rank the Convention had in the legal order and whether it prevailed over domestic law. Could it be invoked in domestic courts and did the courts themselves cite the Convention in cases before them? It was not enough to mention specific forms of discrimination such as apartheid and persecution in the Criminal Code; article 1 of the Convention referred to both direct and indirect forms of discrimination and accordingly the definitions it contained needed to be incorporated into domestic law, along with the provisions of article 4.

28. According to the National Action Programme on increasing efficiency in the protection of human rights and freedom, the drafting of legislation was guided by the Constitution and relevant international treaties; what was needed, however, was not mere guidance but application of principles. He would like to know whether the periodic reports submitted to the President by the working group on implementation of the Programme were public and available to the press and where they could be obtained. He would also like to know to which "relevant State organs" implementation of the Programme had been assigned. Paragraph 9 of the report referred to "other measures" that had led to progress in implementing the Convention: he would like to know what those measures were and what criteria were used in assessing progress. He would also like an explanation of what was meant by offences against "national dignity", a concept referred to in the report; did the expression in fact mean "human dignity"?

29. With regard to support for the establishment of civil society organizations to combat racial discrimination, he would like to know what policies were in place to enable the Government to help create NGOs that were independent and would help reinforce non-discrimination. Lastly, he noted that the report referred to 705 registered Islamic "communities", whereas the head of delegation's introductory statement had referred to 705 Islamic "institutions". He would appreciate clarification of the difference and also of whether the category was based on purely religious criteria.

30. **Ms. Shepherd**, noting with concern that employers could exploit certain provisions of the Migration Code to keep migrant workers in a dependent situation, asked what was

being done to raise awareness of migrants' rights and what happened to schoolchildren whose parents were expelled pursuant to the Code. She also invited the delegation to explain whether language and other barriers prevented ethnic minority students from pursuing further education.

31. It would be interesting to know how many people of African descent resided in Azerbaijan and whether Afro-descendants were among the "other nationalities" mentioned in table 4 in the State party report. She would also like to know whether any people of African descent had complained of racial discrimination, how such complaints were typically handled and whether they were predominantly filed by men, women or children. She asked whether and how the events planned to mark the Year of Multiculturalism in Azerbaijan would be combined with the Programme of activities for the implementation of the International Decade for People of African Descent. Lastly, she wished to know to what extent skin colour was taken into account in decisions to issue entry visas, whether anti-discrimination training was provided to immigration officers and whether people of African descent from the Caribbean were treated differently from continental Africans in terms of the documents required to support a visa application.

32. Lastly, she wondered whether it was feasible to provide court interpretation for all persons who did not speak Azeri, particularly given the sizeable number of different ethnic groups in the country.

33. **Mr. Marugán** said that he would appreciate information on the employment and unemployment rates among the ethnic minorities listed in table 4 of the periodic report. He asked whether inspections were conducted to monitor compliance with article 16 of the Labour Code, which prohibited discrimination in the workplace, whether such discrimination was considered an administrative offence and whether victims of discrimination could be granted redress by administrative bodies as well as courts. He would like to have statistics disaggregated by ethnic group and sex on access to higher education, health care and housing and on measures taken to ensure that refugees had access to education. He also invited the delegation to respond to reports that asylum seekers and refugees did not enjoy the same access to housing as internally displaced persons.

34. **Ms. Mohamed** requested clarification on the procedure for granting citizenship to refugees. She would also like data on women's representation in parliament. In addition, she wondered whether the requirement to broadcast only in Azeri applied to both private and State-owned media outlets.

35. **Mr. Yeung Sik Yuen** asked how many ethnic Armenians were living in Azerbaijan, whether any of the complaints submitted by them to the Commissioner for Human Rights (Ombudsman) had been upheld and whether Armenians were among the ethnic minority representatives who met regularly with the Commissioner.

36. **Mr. Kemal** said that the Committee had received reports indicating that there were as many as 120 boys born for every 100 girls and that the sex ratio had been skewed by human intervention. He invited the delegation to comment on those reports. He would also welcome information on the number of migrant workers in Azerbaijan, on their countries of origin, on the number of Azerbaijanis employed abroad and on the Government's efforts to combat corruption in international labour migration and to prevent all forms of human trafficking.

37. **Mr. Khalaf** asked whether the State party intended to establish a national human rights institution in line with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

38. **Ms. Li Yanduan**, noting that racial discrimination and incitement to hatred were punishable under article 283 of the Criminal Code if committed publicly or by using mass media, asked whether such acts were regarded as offences if committed in private.

39. **The Chair** said that it would be helpful to receive further information on the ethnicities and nationalities of migrant workers in Azerbaijan.

The meeting was suspended at 4.55 p.m. and resumed at 5.10 p.m.

40. **Mr. Khalafov** (Azerbaijan), expressing gratitude to the Country Rapporteur for his detailed analysis of the periodic report, said that the conflict in the Nagorno-Karabakh region was rooted in territorial disputes and a separatist movement that had begun before the collapse of the Soviet Union. As a result, some parts of Azerbaijan, amounting to around 20 per cent of the national territory, had been occupied by the Armenian military forces. After some 25 years of conflict, the Nagorno-Karabakh region were still under Armenian military control, and the dispute remained a serious threat to peace and security in the region, as Armenia continually violated the ceasefire that had been in place for several years. Approximately one million people had been internally displaced or become refugees as a result of the conflict. Over the previous 25 years Azerbaijan had made significant efforts to address the social and economic problems encountered by those persons, including through the provision of housing, free health care and education, and unemployment and other social benefits. About 8,000 refugees and internally displaced persons were currently studying free of charge at Azerbaijani universities. In the long term, however, the only solution to the problems faced by refugees and displaced persons was to enable them to return to their homes in the occupied territory.

41. The Government had successfully provided all refugees and internally displaced persons in the country with decent housing, moving them out of camps with tents into more suitable accommodation. Although all of the issues relating to the conflict undoubtedly had repercussions in terms of the human rights situation, in the territory controlled by Azerbaijan the law was applied and no discrimination on any grounds was permitted. The only difference in the rights accorded to Azerbaijani citizens and to refugees, was that refugees were not able to vote or hold elected office. The population of Armenians in Azerbaijan, which numbered around 30,000 people, enjoyed the same rights and protections as other citizens.

42. With regard to migration policy, special quotas were established annually for migrant workers; generally, about 12,000 foreigners per year were permitted to work lawfully in Azerbaijan. They came from a variety of countries and worked in various sectors. The Government had established a special commission to regulate labour migration.

43. Because of its history, Azerbaijan was a multi-ethnic and multi-religion country. The Government viewed that diversity as a source of great wealth and worked to promote and strengthen intercultural and interfaith dialogue. No distinction was made among the various minority groups, national identity documents gave no indication of the bearer's national or ethnic origin, and the Government did not keep statistics on the numbers of national minorities. All minorities and ethnic groups were represented in the country's government, political and law enforcement institutions.

44. The Convention had supremacy over domestic law, except for constitutional provisions adopted by referendum. All international conventions ratified by Azerbaijan were automatically incorporated into domestic law and were directly applicable in the courts.

45. **Mr. Musayev** (Azerbaijan), noting that 2016 marked the twentieth anniversary of Azerbaijan's ratification of the Convention, said that, because all international treaties to which Azerbaijan was a party became an integral part of national legislation, the definition

of racial discrimination in article 1 of the Convention was directly applicable in Azerbaijan. The principles of equality before the law and equality of opportunity for all were enshrined in the Constitution, as was the prohibition of both direct and indirect discrimination. Since the country's ratification of the Convention, more than 85 normative acts, including 50 laws and 20 presidential decrees, had been adopted to implement its provisions.

46. The Criminal Code established harsher sentences for any offence motivated by racial or religious hatred, which was considered an aggravating factor. Since 2014, only two people had been convicted under article 283 (incitement to national, racial or religious hostility) of the Code. In order for such offences to be prosecuted, the incitement must be committed publicly or by using the mass media. An offence against national dignity was an affront to the national dignity of a citizen.

47. In court proceedings, professional interpretation services were always provided when required for speakers of minority languages; failure to provide interpretation could be grounds for appeal. The interpreters were paid by the State. As to rules of civil procedure, the courts treated everyone involved in civil cases equally, regardless of race, national origin, religion or language.

48. Hilal Mammadov had been convicted for inciting national, racial or religious hostility; for treason; and for drugs offences. His conviction had been upheld on appeal. However, in March 2016 he had been pardoned and released from prison. Rasul Jafarov, the head of an unregistered non-governmental organization who had been convicted of violation of taxation legislation, had also been pardoned.

49. With regard to the status of women in Azerbaijan, 63 women were employed in the judicial system, a number of whom belonged to ethnic minority communities. Over 20 per cent of the employees of the Ministry of Justice were women, including women from national minorities.

50. As to future plans for the implementation of the Convention, two important laws had been introduced in the previous two years, on the subjects of religious extremism and on complaints from citizens to State bodies. The Constitution and a number of laws guaranteed freedom of expression in the media. There were over 5,000 registered media outlets in Azerbaijan and they enjoyed full freedom of expression. As in other European countries, foreign radio stations could broadcast in Azerbaijan via shortwave, satellite and the Internet. In the case of a single radio station that had been closed down, the decision had been made to enable local radio stations to use the frequency on which the station had been broadcasting. There was no prohibition on broadcasting television or radio programmes in foreign languages and such programmes were regularly broadcast in Armenian, Russian, English and other languages.

The meeting rose at 6 p.m.

United Nations CERD/C/SR.2435

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
17 May 2016

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2435th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 4 May 2016, at 10 a.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventh to ninth periodic reports of Azerbaijan (continued)

This record is subject to correction.

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventh to ninth periodic reports of Azerbaijan (continued) (CERD/C/AZE/7-9 and CERD/C/AZE/Q/7-9)

1. *At the invitation of the Chair, the delegation of Azerbaijan took places at the Committee table.*

2. **Mr. Safikhanli** (Azerbaijan) said that the rights and freedoms of all ethnic groups were regulated by the national Constitution and legislation. The Government upheld the principles of unity and diversity. The Office of the Commissioner for Human Rights (Ombudsman) was an independent body, established under the Constitution. In its role as the national human rights institution, it had been awarded "A" accreditation status by the Global Alliance of National Human Rights Institutions (formerly the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights). All persons resident in Azerbaijan, including stateless persons and asylum seekers, could file complaints of violations of human rights with the Ombudsman, regardless of nationality, ethnic origin, religious affiliation or language.

3. The Ombudsman had run a number of campaigns to raise awareness of the Convention, put forward proposals designed to promote religious tolerance, held regular meetings with representatives of ethnic minority groups, opened regional centres in areas with large ethnic minority populations and signed cooperation agreements with 14 ombudsman institutions in other countries. The National Action Programme of the Republic of Azerbaijan on increasing efficiency in the protection of human rights and freedoms defined measures needed to improve the legal framework and the activities of State bodies for the protection of rights enshrined in the international conventions to which Azerbaijan was a party. Responsibility for implementing the Programme was shared between 43 different government bodies, including the Cabinet of Ministers, the Office of the General Prosecutor and a number of other national and local executive authorities. Parliamentarians and representatives of local authorities, law enforcement agencies, the judiciary, non-governmental organizations (NGOs), the media and ethnic minority groups took part in public hearings on the promotion and application of the Programme. Reports on progress made in implementing the Programme were posted on the website of the Ombudsman.

4. In collaboration with civil society groups, NGOs, the media and local authorities, the Ombudsman organized events to celebrate the International Day for Tolerance and to promote human rights, peace, the elimination of discrimination and preservation and development of the cultural heritage of ethnic minorities. The Ombudsman had also campaigned for Azerbaijan to become a party to the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization and Protocols 12 and 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Ombudsman worked with the Office of the United Nations High Commissioner for Human Rights to raise awareness of the Convention in regions with significant ethnic minority populations.

5. Armenian nationals who were citizens of Azerbaijan could file complaints with the Ombudsman, which carried out the corresponding investigations. In addition, Armenian nationals currently resident in third countries and formerly resident in Azerbaijan could request the Ombudsman to provide documents relating to issues such as pension rights. It was vital to combat discrimination against migrants and refugees, Islamophobia and hate crimes, while promoting, intercommunal harmony, conflict prevention, post-conflict

rehabilitation and the safe and dignified return of refugees and displaced persons to their homes.

6. **Ms. Mammadaliyeva** (Azerbaijan) said that women made up the majority of the staff of a number of government ministries and agencies and the diplomatic service. Women also ran several State committees and higher education institutions, and the deputy prime minister of one autonomous region was a woman. In total, 16 per cent of members of the Milli Mejlis (National Assembly) were women, as were the heads of a number of working groups on international and regional relations and cultural and social issues. In the field of science, women made up almost half of all PhD candidates and around half of the workforce.

7. There were more than 20 cultural centres for ethnic minorities in Baku, in addition to three theatre companies which performed in minority languages, including Russian, Lezghian and Georgian. Festivals celebrating minority cultures were organized and measures had been taken to promote the music of ethnic minorities.

8. **Mr. Mammadli** (Azerbaijan) said that around 96 per cent of the population of Azerbaijan was Muslim, with the remaining 4 per cent being made up of Orthodox Christians, Catholics, Protestants of various denominations, Jews, Baha'is and Krishna. There were more than 700 Muslim religious communities and 34 non-Muslim religious communities registered in Azerbaijan. In order to register a religious community with the State Committee on Religious Associations, applicants must provide their names, titles and information on their religious affiliation. Muslim groups must obtain an official certificate issued by the Caucasus Muslim Board attesting to the nature of their communities. Christian and other faith groups must submit similar documents proving that they were affiliated with communities of the same religion based abroad. The Government provided registered minority religious communities with financial support. In the previous four years, Jewish communities, for example, had received approximately 300,000 Azerbaijani manats. All faiths were equal before the law and, although the majority of Azerbaijanis were Muslim, no religion was considered dominant.

9. **Mr. Gurbanov** (Azerbaijan) said that discrimination in education was prohibited under article 42 of the Constitution and that all persons had the legal right to education and to use their mother tongue. A number of schools and institutions of higher education provided education in both minority languages and Azeri. Minority language lessons were provided in regions with large ethnic minority populations. Dictionaries, teaching manuals and school textbooks had been published in a number of minority languages. The national authorities had made significant efforts to provide secondary and higher education and educational infrastructure for persons who had fled the occupied region of Nagorno-Karabakh. Higher education was provided free of charge to internally displaced persons meeting the relevant requirements.

10. In total, 88 persons of African origin were currently enrolled at insitutions of higher education in Azerbaijan. A special commission had been set up to determine the academic level of migrant children, over 300 of whom were currently studying at secondary schools in the country. In total, 81.6 per cent of all teachers were women, with the figure standing at 53 per cent in institutions of higher education. Approximately 55 per cent of current trainee magistrates were women.

11. The Ministry of Education had organized a number of activities aimed at promoting cultural diversity as part of the year of multiculturalism. Readings and art competitions relating to multiculturalism were taking place in secondary schools, and multiculturalism departments had been established in higher education institutions.

12. **Mr. Khalafov** (Azerbaijan) said that the efforts to promote multiculturalism and preserve the country's cultural, religious and ethnic diversity were a work in progress. The dialogue with the Committee would doubtless help to further those efforts.

13. **Mr. Zalov** (Azerbaijan) said that Azerbaijan had been a party to the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children since 2003. In 2005, the Law on Combating Trafficking in Persons had been adopted. A national coordinator had been appointed in 2016 to combat human trafficking, and a coordination council had been established by decision of the Cabinet of Ministers. The council was composed of representatives of 27 different government departments and ministries, in addition to representatives of NGOs and the mass media. The national coordinator reported to parliament on an annual basis.

14. Efforts were being made to improve domestic legislation on human trafficking in line with the relevant international conventions. A relief fund for victims of human trafficking and a national mechanism for the social rehabilitation of victims had been put in place, as had a programme to eliminate social problems that created circumstances conducive to human trafficking. Norms were in place to ensure transparency in the management of resources intended for victims of human trafficking, and steps had been taken to involve NGOs in the work carried out by victim support agencies and in efforts to protect migrant workers.

15. Draft legislation had been put forward regarding the criminal prosecution of perpetrators of human trafficking, the length of stay permitted to foreign victims while their cases were being investigated and the protection of women and children particularly at risk of human trafficking. The third National Plan of Action to Combat Trafficking in Persons, which covered the period 2014-2018, was multifaceted in nature, comprising 14 areas of work; social rehabilitation of victims and protection of their rights were particular focuses.

16. The number of criminal cases involving human trafficking had risen by 22 per cent from 2014 to 2015; 38 people had been prosecuted. Victims from a number of countries, including Turkey and the United Arab Emirates, had been repatriated. All victims were provided with assistance as needed. Some received financial support, others were given jobs or placed in vocational courses, while others were accommodated in victim shelters or social protection centres where they obtained legal and psychological help.

17. **Mr. Musayev** (Azerbaijan) said that more than 3000 NGOs were registered in Azerbaijan. Over 500 of them were devoted to the defence of human rights, approximately 50 dealt with issues relating to ethnic minorities and some 130 promoted the rights of women. A strong legal base existed to regulate their activities. The Council on State Support to Non-Governmental Organizations had been established to provide funding for activities in various areas. NGOs also received funding from national and foreign donors.

18. A number of actions had been taken in recent years to promote the development of civil society institutions. For example, in 2014 a law had entered into force on public participation in policymaking and decision-making at the national and local level. The goal was to involve citizens in managing State affairs, to ensure public monitoring of activities carried out by central and local authorities and to organize public hearings and discussions. Such events were held on a monthly basis for citizens across Azerbaijan, including in regions with large ethnic minority populations. The Minister of Justice had met with citizens in 35 regions in the previous three years and had not received a single complaint regarding the rights of ethnic minorities. In addition, a public committee operated under the Ministry of Justice; its members included 11 well-known human rights defenders, several of whom represented ethnic minorities.

19. **Ms. Hohoueto** said that she would like further clarification regarding offences against national dignity. How was the offence defined under the Criminal Code? She would also like more information on the Muslim religious communities in Azerbaijan. She did not understand how there could be 700 communities of a single religion and asked for clarification on what the State party classed as a religious community.

20. **Mr. Avtonomov**, noting that a Latin alphabet had recently been adopted for the Azeri language, enquired whether national minorities that wished to maintain the Cyrillic alphabet would be able to do so. He commended the State party's efforts to promote bilingualism through television broadcasts in languages other than Azeri.

21. **Mr. Musayev** (Azerbaijan) said that, under the Criminal Code, certain circumstances were considered aggravating factors. If a crime was motivated by national, ethnic or religious hatred, for example, the punishment would be harsher. Such provisions were in line with the Convention.

22. **Mr. Mammadli** (Azerbaijan) said that, according to unofficial statistics, 65 per cent of all Muslims in Azerbaijan were Shia and 35 per cent were Sunni. The 700 Muslim communities comprised adherents of five or six different schools of Islamic thought. Those communities were religious organizations that operated like other NGOs, but were registered with the State Committee for Work with Religious Organizations rather than with the Ministry of Justice.

23. **Mr. Gurbanov** (Azerbaijan) said that speakers of a particular language would not have to adopt the Latin alphabet unless they wished to do so. He did not believe that any group had chosen that option thus far.

24. **Mr. Musayev** (Azerbaijan) said that a significant reform of the judicial system had been undertaken in order to make the system more transparent and increase its independence. A Judicial Council had been established, made up of representatives of the three branches of government, including nine judges and representatives of the prosecution service and the Bar Association. It served as an independent body for judicial self-management. In cooperation with the Council of Europe, a transparent system for the appointment of judges had also been set up. Judges were appointed on the basis of recommendations from a selection committee made up mostly of other judges. Candidates for a position as judge had to undergo specialized training, take a written exam and undergo an interview. More than 60 per cent of currently serving judges had been appointed by means of the new selection procedure. In order to further strengthen the impartiality of judges, their salaries, which had greatly increased since the country's independence, were set by law and had not been reduced despite the recent economic crisis. The reform of the Azerbaijani judicial system had been cited by the Council of Europe as an example of best practice in that area.

25. The judicial infrastructure was also being modernized. Currently, 11 ultramodern courts were functioning and 10 more were being equipped; they had the latest electronic technology, documents provided in electronic form and modern sound and video recording systems, including for remote testimony by witnesses. Staffing had likewise changed: whereas in the past there had been few judges and large numbers of support staff, the number of judges had doubled and each judge had one assistant. Support staff received specialized training; 3.5 per cent of court staff were from minority groups

26. Great emphasis had been put on fighting corruption. The National Action Plans on Open Government and the Fight against Corruption (2012-2015) had been adopted in September 2012. A code of ethics for judges had also been adopted. Citizens could call a telephone hotline to report corruption; all allegations of corruption were thoroughly investigated and severe penalties imposed if the allegation was confirmed. Several judges

had been investigated and dismissed on grounds of corruption. According to recent surveys, the various reforms had increased public confidence in the integrity of the judicial system.

27. **Mr. Sadiqov** (Azerbaijan) said that article 7 of the Law on the Status of Refugees and Internally Displaced Persons defined the conditions for the treatment and integration of those groups. The State Migration Service was responsible for the social protection and integration of migrants and stateless persons. It was the competent authority for the issuance of temporary residence permits based on the procedures and criteria outlined in article 77 of the Migration Code. Numerous ministries were involved in meeting the needs of migrants, as were local authorities. The Government was mindful of international norms relating to the treatment of migrants. The State Migration Service operated training centres for foreign migrants and stateless persons, where they could learn Azeri and familiarize themselves with Azerbaijani history, culture and law and with their rights. Any incidents of racial discrimination or intolerance could be reported to the Migration Service.

28. Migrants, including refugees, internally displaced persons and stateless persons, had the right to receive housing, education and health care and to seek employment once authorized to do so. They had the same health-care rights and received the same quality of care as Azerbaijani citizens. Applicants for refugee status could be housed in a temporary accommodation centre for up to three months while awaiting a decision on their application. Residents of the centres were provided with room and board, medical and psychological care and facilities for leisure and sports activities. Persons granted refugee status and internally displaced persons were eligible for a housing subsidy and a reduction of certain taxes for up to 10 years.

29. In 2014 and 2015, respectively, the State Migration Service had issued 51,366 and 53,954 temporary residence permits, as well as 1,859 and 2,640 permanent residency permits. Also in 2014 and 2015, respectively, 12,000 and 11,230 migrants and stateless persons had been issued work permits. In 2014, 202 foreigners (399 counting their family members) had applied for refugee status, which had been granted to 2 applicants (5 including family members).

30. **Mr. Khalaf** said that he remained confused about the 705 Muslim communities in Azerbaijan, which the delegation had likened to NGOs. Could the delegation explain further what was meant by "religious community"? He noted that article 18 of the Constitution established the separation of church and State. He wondered whether that meant a particular religion or church or all religions. He asked whether the State party intended to establish a separate national human rights institution in addition to the Commissioner for Human Rights (Ombudsman). Lastly, he asked for concrete examples of the progress made in the State party to eliminate racial discrimination following the adoption of new laws and measures in that regard; he also asked how that progress was measured.

31. **The Chair** pointed out that the Office of the Commissioner for Human Rights, or Ombudsman, had been recognized as the national human rights institution and had been granted "A" status by the Global Alliance of National Human Rights Institutions.

32. **Mr. Khalafov** (Azerbaijan) said that the figure of 705 simply referred to the number of Muslim groups and organizations registered with the State Committee for Work with Religious Organizations. The State did not define what constituted a religious community. The communities defined themselves. People were free to join a religious community and worship as they pleased, but no one was compelled to do so. Under the Constitution, no religion or church had special status; Azerbaijan was a secular State. While, historically, Azerbaijan had been part of the Muslim world, modern Azerbaijan was a multicultural and multi-ethnic country where all religions and their organizations and institutions were recognized by the State without discrimination.

33. Awareness-raising about human rights had been prioritized at all levels of the educational system. The National Academy of Sciences had an institute for human rights education. As for examples of progress in the promotion of human rights, in the relatively short time since independence, Azerbaijan had succeeded in creating a legal system for the protection of those rights. While there had been difficulties, especially in the early years, and more remained to be done, the Constitution and legal system reflected international standards; furthermore, the Government took very seriously the recommendations of the human rights treaty bodies.

34. **Mr. Amir** (Country Rapporteur) recalled that the Convention did not deal with religious discrimination per se; religion was only of interest to the Committee in relation to discrimination against an ethnic group, which might have a different religion from the majority of the population.

35. **The Chair** said that, to her knowledge, there was no record of any complaints of racial discrimination having been filed with the State party's courts. She wished to know how the Government intended to address that anomaly and whether it had considered introducing additional administrative and legislative provisions that might help to create conditions conducive to the filing of complaints. She also wished to know more about both the general complaints mechanism and the specific complaints mechanism available to migrants through the State Migration Service. She asked whether all judicial officials received explicit training to enable them to recognize, address and provide redress for racial discrimination. Lastly, she requested further information about the elements in the State party's human rights strategies that specifically addressed racial discrimination.

36. **Mr. Musayev** (Azerbaijan) said that, in recent years, there had been only two criminal cases involving offences motivated by racial discrimination. In his view, that low number was an indication of progress towards building a tolerant, inclusive society. National legislation set out strict punishments for offences motivated by racial discrimination, and those laws were effective in preventing such offences. Azerbaijan had one of the lowest crime rates in the region.

37. The Academy of Justice regularly held training courses for all staff of the justice system, and that training included a strong emphasis on the Convention and on other international treaties. Competitive examinations and recertification examinations for judicial officials included mandatory questions about United Nations and Council of Europe conventions. The Policy Academy and other training institutions for law enforcement officials also included instruction on international conventions as a compulsory element of their curricula.

38. **Mr. Khalafov** (Azerbaijan) said that, as far as he was aware, the authorities had not received any complaints of racial discrimination against migrants.

39. **The Chair**, pointing out that the absence of complaints was not necessarily an indicator that there was an absence of racial discrimination, said that she still wished to know more about the complaints mechanism available to victims of racial discrimination, particularly migrants, stateless persons and non-citizens.

40. **Mr. Yeung Sik Yuen** asked how it could be that there was not a single Azerbaijani who felt that it was safe to live in Armenia, while at the same time there were some 130,000 Armenians living in Azerbaijan. He asked whether that figure referred to Armenians living in the Nagorno-Karabakh region.

41. **Mr. Khalafov** (Azerbaijan) said that, historically, there had been a significant Azerbaijani population in Armenia. Indeed, Azerbaijanis had made up 42 per cent of the population of Yerevan, but during the Soviet period some 250,000 had been forcibly deported. There was no longer a single Azerbaijani left in the Nagorno-Karabakh region, as

all the Azerbaijani inhabitants of that region had been killed or forced to leave during the conflict there. That tragedy was the result of an aggressive policy of ethnic cleansing on the part of the Armenian Government, which was sowing enmity among its people and teaching schoolchildren that Azerbaijanis were their enemy. The Armenian and Azerbaijani peoples both suffered as a result.

42. **Mr. Musayev** (Azerbaijan) said that a special law had been adopted in late 2015 to regulate the handling of all types of complaints lodged by citizens. State bodies were required to give consideration to such complaints, which could be lodged by any individual regardless of ethnic or racial origin. All complaints were formally registered, and the law set out specific timelines for responding to different types of complaints.

43. **Mr. Amir** thanked the delegation for the answers it had provided on all the matters raised by the Committee, noting that the delegation had placed considerable emphasis on national unity. It had been explained that all Azerbaijani citizens were issued with the same type of passport and that there was no mention of ethnic or national origin in those passports. It had also been explained that individuals who had been imprisoned for exercising their freedom of expression had subsequently been pardoned and released, and that all persons had the right to express themselves in the media, including foreign radio and television outlets. He welcomed the information provided on women's active participation in the country's political and public life, but found it regrettable that statistical information on that subject had not been included in the State party report. While significant progress had been made towards eliminating racial discrimination in Azerbaijan, much remained to be done to ensure access to social security, health care, employment and other services for ethnic minorities, especially in rural and mountainous regions.

44. **Mr. Khalafov** (Azerbaijan) said that the dialogue with the Committee had been both constructive and interactive. He thanked the Country Rapporteur for setting a dynamic tone for the discussions and raising some important issues. He appreciated the spirit of interaction and mutual understanding that had permeated the dialogue. His delegation would convey the Committee's comments and recommendations to officials at the national level so that measures could be taken to improve the implementation of the Convention. He thanked the Committee for the opportunity to discuss the Nagorno-Karabakh conflict, which was very distressing for Azerbaijani society. He was convinced that the people on both sides wanted a swift solution to the conflict, which had been dragging on for 25 years. Any Committee member who wished to visit Azerbaijan would always be welcome to do so.

45. **The Chair** said that the Committee appreciated the fact that the State party had sent such a high-level delegation. The Committee was aware that Azerbaijan was a new nation and that it faced particular difficulties in regions of the country where the Government was not able to implement the Convention. The Committee would make its best effort to fairly assess the implementation of the Convention on the basis of all the information provided. She urged the State party to encourage NGOs working in the country to be present during the consideration of the State party's next periodic report.

The meeting rose at 12.55 p.m.

United Nations CERD/C/SR.2436

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
13 May 2016

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2436th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 4 May 2016, at 3 p.m.

Chair: Ms. Crickley

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined thirteenth to fifteenth periodic reports of Namibia

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined thirteenth to fifteenth periodic reports of Namibia (CERD/C/NAM/13-15 and CERD/C/NAM/Q/13-15)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Ms. Shapwa** (Namibia), introducing the combined thirteenth to fifteenth periodic reports of Namibia (CERD/C/NAM/13-15), said that the Convention provided guidelines on ways of confronting behaviour that challenged the inherent equality of all human beings. Her country nevertheless shared the view of many States that an enhanced international framework was needed if the changing dynamics of racial discrimination were to be adequately addressed.

3. Namibia had established an enviable track record of peace, stability and racial harmony. The Constitution prohibited discrimination on grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status, and remained the bedrock for peaceful coexistence after centuries of racism and apartheid. Her country was still struggling to overcome the effects of the divisions that had been created, but a recent survey had shown that Namibia was the most tolerant society in Africa. Many challenges remained in empowering previously disadvantaged persons, however, and affirmative action measures had been put in place.

4. The Government had established two new offices in the Presidency, one dealing with marginalized communities and the other for persons with disabilities. Each was headed by a member of the group in question at the level of deputy minister. The Ministry of Health and Social Services had issued a directive to provide guidance on the provision of family planning services, including sterilization. Sterilization was done only with written consent, which included acknowledgement that counselling had been received and took the form of an affidavit signed at a police station.

5. The budget and staffing provisions for the Office of the Ombudsman had been increased to enable it to investigate human rights abuses and carry out awareness programmes, including human rights education. The Office had facilitated the drafting of the National Human Rights Action Plan adopted by the Government in December 2014, which addressed seven thematic areas including access to land and the right to non-discrimination. In its capacity as national human rights institution, the Office had received A status accreditation on three consecutive occasions from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Government was considering legislative amendments to address the issues raised by the Committee regarding the Ombudsman's independence.

6. A new Ministry of Poverty Eradication and Social Welfare had been established to coordinate all poverty eradication programmes. In acknowledgement of the impact of unemployment on poverty levels, the Wage Order for Domestic Workers Regulations under the Labour Act of 2007, setting a minimum wage and minimum conditions for domestic workers, had entered into force in December 2014. The Child Care and Protection Act had been adopted in 2015 and free universal primary education and secondary education had been introduced.

7. Namibia ranked third among African countries in terms of the number of women in Parliament, and twelfth in the world. Women comprised 45 per cent of the total number of employees across all sectors. The Traditional Authorities Act required traditional

authorities to promote women to positions of leadership. The 2010-2020 National Gender Policy provided guidelines and mechanisms to ensure gender equality and women's empowerment. The Government had improved the support services for survivors of gender-based violence.

8. All government buildings were required to be physically accessible to persons with disabilities. A policy framework was in place for the local integration of refugees and the Ministry of Home Affairs and Immigration had been directed to integrate some Angolan refugees into Namibian society.

9. **Mr. Avtonomov** (Country Rapporteur) said that the diversity of people in Namibia showed how it was possible for an extremely rich mix of cultures and languages to live together. He would have appreciated more information in the report on the various African groups. Some of those groups spoke endangered languages: were any efforts being made to preserve those languages?

10. He noted that the name "San", used in censuses for one of the ethnic groups, was not the group's own name for itself. He hoped that one day the group would be able to self-identify in censuses using its own name. It was clear from the report that the State party had made great efforts to find a just solution to the historical expropriation of land from groups such as the San, and the Special Rapporteur on the rights of indigenous peoples had noted that there had been progress in promoting their rights, but problems remained. He would like to know whether the State party defined the San and the Himba as indigenous peoples, which would reflect their spiritual and physical connection to the land. He noted from the report that two groups that had been recognized had no land, and he would appreciate comments in that regard.

11. The State party was to be commended on the approach it had adopted in drafting its report, which dealt with the replies to the Committee's previous concluding observations separately from the new developments in the State party. However, he was confused by the fact that the State party's core document referred to the latest census, taken in 2011, while the report itself referred only to the 2001 census. He would appreciate an explanation.

12. He asked when the Child Care and Protection Act would enter into force and requested additional information on the ongoing reform of the Education Act. Noting that the school dropout rate among Himba children remained high and that the enrolment rate of 7-year-olds was considerably lower among native speakers of Herero and of the Khoisan languages than among native speakers of English, he said that further efforts were needed to boost literacy rates.

13. He would appreciate information about a white paper on indigenous peoples that had recently been submitted to Parliament by the Ombudsman and about the Government's plans with regard to ratifying the Convention Governing the Specific Aspects of Refugee Problems in Africa. He would welcome an update on the progress of talks between Namibia and Germany concerning possible reparations for descendants of the victims of the Herero and Namaqua Genocide. The delegation should also elaborate on the selection process for members of the Council of Traditional Leaders, bearing in mind that the San people tended not to have leaders or chiefs.

14. **Ms. McDougall**, while commending the State party for the progress that it had made in the face of significant challenges, said that poverty remained a major concern and asked why legislation such as the Communal Land Reform Act and the Affirmative Action (Employment) Act had not proved effective in redistributing wealth and in restructuring the economy, respectively.

15. The delegation should describe the Government's understanding of the concept of communal land and the extent to which the Communal Land Reform Act was compatible

with the culture of the San people. She wished to know whether the San people were considered a part of society and what measures were envisaged to improve their quality of life. She would also appreciate comments on whether the Government had taken sufficient educational, legislative and other measures to combat hate speech and racially motivated physical attacks, particularly against the San people.

16. **Mr. Kemal** asked whether the State party intended to broaden the scope of the Racial Discrimination Prohibition Act in order to bring it fully into line with article 1 of the Convention. He said that he would welcome details of efforts to desegregate schools and asked whether a time frame had been established for doing so. The delegation should also respond to reports that mobile schools set up for the benefit of the Himba community were being closed owing to a lack of resources and elaborate on the steps that were being taken to ensure a more equitable allocation of special funds among marginalized communities.

17. He wished to know what steps the State party was taking to implement some of the recommendations made by the Committee on Economic, Social and Cultural Rights in its concluding observations on the initial report of Namibia (E/C.12/NAM/CO/1). In particular, the delegation should describe what was being done to expand the mandate of the Ombudsman, to introduce a limit to the Ombudsman's term of office, to give the Ombudsman the power to select, recruit and remunerate his or her own staff and to specify the source of the funds used to cover the Ombudsman's expenses. It should indicate when the Government intended to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and to adopt a law recognizing indigenous peoples on the basis of self-identification and protecting their rights, including the right to ownership of the lands that they traditionally occupied. Details of the measures envisaged to ensure that the free, informed consent of indigenous peoples was obtained before the approval of development projects, such as the construction of a dam in the Baynes Mountains, would also be welcomed.

18. Lastly, he wished to know when the Government would implement the recommendations made by the former Special Rapporteur on the rights of indigenous peoples following his visit to Namibia in 2012 and what was done to promote Namibian ownership in the fishing industry.

19. **Ms. Dah** said that she was pleased to see the progress that Namibia had made since independence in working to eliminate racial discrimination, especially given the State's complex history of colonization and its struggle for independence. In spite of the fact that Namibia was a very large country, it had problems with landownership. Similarly, although the country had one of the highest per capita income levels in Africa, over half of the population lived in absolute poverty. Economic development was essential to protecting the most vulnerable sections of society and to eliminating discrimination, in accordance with article 5 of the Convention.

20. Although the Bantu people were not considered indigenous to Namibia, as was mentioned in paragraph 15 of the core document (HRI/CORE/NAM/2014), they were indigenous to the region in general and could therefore also potentially benefit from targeted special measures. In particular, such measures should focus on land, employment and education and should be developed with the active participation of the communities they targeted. Given that certain communities in the region had been artificially separated by colonial borders, perhaps the approach to special measures used in neighbouring countries could be studied, in order to learn from their experience. Namibia had introduced a number of laws to combat discrimination; however, the Committee would appreciate more information on the impact of those laws.

21. **Mr. Murillo Martínez** said that the economic situation in Namibia was of concern, given that more than 60 per cent of the population lived on under 2 Namibia dollars per day.

More information would be welcome on the scope of the special measures put in place, especially in the field of education. The Committee would also like to know more about how vulnerable groups were incorporated into the education system in practice, from the standpoint of interracial relations in particular. Was the State's ethnic diversity reflected accurately in the education system and what was being done to overcome the legacy of apartheid in education? Were more data available on HIV infection rates and on international cooperation in obtaining affordable medication to treat infected persons? Regarding the implementation of an electronic policing and monitoring system, could the delegation provide more information on how it worked?

22. Finally, on the subject of reparations for the genocide committed in Namibia, he asked what progress had been made in the negotiations with the German authorities.

23. **Mr. Yeung Sik Yuen** said that the State party's report (CERD/C/NAM/13-15) had been submitted in October 2014 and the Committee would therefore appreciate an update on the state of progress in implementing legislation such as the Racial Discrimination Prohibition Act, mentioned in paragraph 18, the laws pertaining to marriage and inheritance, mentioned in paragraph 19, and the legislation on hate speech, mentioned in paragraph 30.

24. The Government should be commended on its efforts to improve living conditions in Namibia, but it was regrettable that more than 50 per cent of the population continued to live in poverty despite the strength of earnings generated by the country's abundant natural resource base. Moreover, despite its large size and relatively small population, Namibia faced problems relating to land distribution. The Committee would appreciate more information on the resettlement initiative mentioned in paragraph 58 of the State party's report, given that a large amount of land seemed to be allocated to individual families. Was that the best way to ensure optimal use of the land? Paragraph 61 of the report referred to the practice of issuing a certificate of landownership to members of indigenous communities. Did that practice entail drawing up a lease and under what conditions did resettlement take place?

25. **Ms. Shepherd** said that the Committee would appreciate more detailed data on demographics and ethnic groups, especially on the landownership patterns of the minority white population. More information would also be appreciated on the progress in redistributing land and whether the State was on track to meet the goals it had set in that regard. What efforts were made to ensure that the 70 per cent of Namibians, who were mostly black and who lived on land which constituted only 43 per cent of the territory of the State, were able to make a decent living? In terms of education, were efforts made to ensure that vulnerable groups were able to access education facilities and was the country's racial history accurately reflected in curricula and teaching materials?

26. **Mr. Marugán** said that the Committee would like to know more about the various surveys conducted on economic and social needs in Namibia, to which reference was made in paragraph 77 of the report. The Labour Act of 2007 prohibited discrimination against persons with AIDS or HIV positive persons. Given the high rate of HIV and AIDS infection among the San community and other vulnerable groups, what measures and programmes had been introduced to ensure that the law was implemented in practice? The report (A/HRC/23/36/Add.1) of the Special Rapporteur on extreme poverty and human rights, following her mission to Namibia in 2012, indicated that the unemployment rate had reached 51.2 per cent in 2008; were unemployment data disaggregated by ethnic group available?

27. Given that Namibia suffered from high levels of inequality, were there plans to introduce policies to redistribute wealth? In the report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/24/41/Add.1) it was stated that a very low number of San students attended university. Could the delegation provide more data on the numbers of

San persons at all levels of the education system? In the same report it was pointed out that persons living in rural areas often had difficulty in accessing health-care facilities; was more information available on that issue?

28. **Mr. Lindgren Alves** asked what measures the State party was taking to address the discrimination suffered by the isolated indigenous community known as the Himba. He also wished to know whether the State party considered that the San indigenous community encountered prejudice and discrimination more frequently than other non-white groups, as the San seemed to be treated as a special case. He asked which ethnic groups belonged to the population category referred to by the State party as "coloured", whether that term implied that they were of mixed race, and whether they accepted the use of that term.

29. **Mr. Bossuyt** said that it was his understanding that the Namibian Constitution permitted the use of languages other than the country's official language, English, and guaranteed persons who did not speak English the right to communicate in their mother tongue in the administration, justice, education and public service sectors. He asked what the most commonly spoken languages other than English were; whether minority and indigenous groups were also guaranteed that right; whether an interpretation service was available to persons who did not speak English; and whether bilingual education was provided in Namibian schools.

30. The Committee objected to the use of the term "*discrimination positive*" in the French version of the State party's report, as discrimination was a purely negative phenomenon which could never be justified. More accurate terms should be used in the future, such as "*action positive*", which corresponded to the term "affirmative action" used in the original English version of the report, or "*mesures correctrices*", or "*mesures spéciales*".

31. Noting that the reservation entered by Namibia to article 26 of the 1951 Convention relating to the Status of Refugees enabled it to restrict the freedom of movement of refugees and asylum seekers residing in the national territory, he asked why the State party deemed such restriction necessary.

32. Turning to the right to own property, he noted with interest that the State party reserved the right to expropriate fixed property for "public purposes" which might not be in the public interest. He invited the delegation to explain the nature of those "public purposes".

33. **Ms. Hohoueto**, noting that the Namibian Constitution accorded equal recognition to both customary and common law on the condition that neither ran counter to statutory law or to the Constitution itself, asked how the State party ensured that those laws were applied in such a way as to accord equal protection and treatment to all persons; which law was applied by community tribunals; and whether the State party had removed all provisions that discriminated against women and girls belonging to certain ethnic groups from its laws on marriage and inheritance.

34. The jurisprudence of the High Court could not be used as a substitute for the legal prohibition of hate speech in Namibian law in accordance with article 4 of the Convention. It was regrettable that the burden of proof fell upon the complainant in civil cases involving racial discrimination. She invited the State party to consider amending its civil law to shift the burden of proof from the complainant to the alleged perpetrator in such cases, as racial discrimination was often difficult to prove in practice. Lastly, she noted with concern that, while racial discrimination was prohibited in several other laws, it was still not prohibited in the Criminal Code. She urged the State party to remedy that discrepancy without delay.

35. **Ms. Mohamed** said that, as women had equal landownership rights, she would be interested to know why they still faced obstacles in accessing land for cultivation. She also wished to know to what extent collective rights were protected in Namibia and to be informed about the content of the law on domestic workers.

36. **Mr. Avtonomov** asked what measures the State party was taking to prevent the spread of HIV and AIDS, particularly among minority and indigenous groups, and to assist persons already infected with the disease. He wished to know how the State party planned to address the dearth of qualified medical practitioners, as there were only around 600 doctors covering the entire national territory. Noting that the uneven distribution of income in Namibia often prevented certain minority and indigenous groups from having access to health care, he asked what measures the State party envisaged taking to guarantee such access, especially for groups living in remote areas.

37. The vulnerability of the San to discrimination, coupled with the fact that they lived on the fringes of Namibian society, often dissuaded them from asserting their rights and participating in national decision-making processes. He asked how the State party planned to ensure the continued survival of that indigenous community and of its language and traditions in a modernized society and its equitable representation in national decision-making bodies.

38. Noting that the Namibian Constitution recognized customary law and that customary courts were in operation in the national territory, he enquired about the State party's approach to identifying and outlawing outdated and/or discriminatory customs that were incompatible with the international obligations that it had assumed upon ratifying the Convention.

39. Lastly, he wished to know whether the State party intended to ratify the amendment to article 8 of the Convention concerning the financing of the Committee's activities and whether it intended to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals in accordance with article 14 of the Convention.

40. **Ms. Dah** said that it was important for as many States parties as possible to ratify the amendment to article 8, as the goal of achieving universal ratification of the Convention was within reach. She requested additional information on the mandate, powers, authority and membership of councils of chiefs in Namibia. In that connection, she asked whether there were communities in Namibia that functioned without a chief and, if so, how those groups were represented in councils of chiefs. She asked what measures were in place to ensure that marginalized and vulnerable groups were equitably represented in national decision-making bodies.

41. Noting that the State party had adopted a number of special measures to guarantee the San access to education, she asked about the primary, secondary and tertiary enrolment and completion rates for San students; whether the establishments they attended were public or private; whether any of them were subsidized; how those that were private were organized; and whether the San were free to transfer from one establishment to another.

42. Lastly, she wished to know whether the State party had considered devising a strategy to preserve the traditional cultural knowledge of the minority and indigenous groups living in the national territory, in particular that relating to medicine and the environment. The fact that such knowledge was often only passed on orally from generation to generation underscored the need for a collective effort at the continental level to preserve it for posterity. She would also welcome the participation of the Namibian national human rights institution in future interactive dialogues with the Committee.

43. **The Chair** asked whether the State party had attempted to measure the impact of the introduction of the old-age pension scheme on poverty and life expectancy, and how it would ensure that those who were the first to receive pensions were those who needed them most.

The meeting rose at 5.55 p.m.

United Nations CERD/C/SR.2437

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
17 May 2016

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2437th meeting
Held at the Palais Wilson, Geneva, on Friday, 6 May 2016, at 10 a.m.

Chair: Ms. Crickley

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined thirteenth to fifteenth periodic reports of Namibia (continued) (CERD/C/NAM/13-15 and CERD/C/NAM/Q/13-15)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Ms. Shapwa** (Namibia) said that the Namibia Statistics Agency did not compile information on the ethnic composition of the population or disaggregated data on the enjoyment of economic, social and cultural rights by the various population groups, as that was not in line with the Government's policy of reconciliation and nation building. However, the Namibian Labour Force Survey conducted in 2014 revealed that more than 700,000 persons aged 15 and over had been employed during 2014. The unemployment rate for the same period had stood at 28.1 per cent, which was marginally higher than the rate in 2013.

3. All ethnic groups were represented in Parliament and in all spheres of public life. If a certain ethnic minority was not represented in the Government, the President was entitled to appoint a competent representative to Parliament. Even those marginalized groups that had previously been unable to participate in public life owing to a lack of education had since been afforded opportunities to facilitate their involvement.

4. Namibia was currently in the process of reviewing its anti-discrimination legislation. In the wake of the case of *Kauesa v. Minister of Home Affairs* 1995, the Government was considering an amendment to the articles on hate speech and to the definition of racial discrimination under the Prohibition of Racial Discrimination Act of 1991. The intention was to bring the definition of racial discrimination into line with article 1 of the Convention. The case of *Government of the Republic of Namibia and Others v. Mwilima and all the Other Accused* in the Treason Trial 2002 demonstrated that the Convention was enforceable by Namibian courts, as provided for under article 144 of the Namibian Constitution. Furthermore, in order to ensure the appropriate application of the Convention, workshops were held for judges of the High Court and the Supreme Court in which they received training on the Convention.

5. The Community Courts Act provided for the establishment of community courts, the appointment of justices, the application of customary law by such courts, and the right for community courts to appeal to other courts, among other provisions. Community courts had existed for centuries and had enjoyed jurisdiction over all kinds of legal cases before the establishment of common law courts in Namibia. However, their jurisdiction was currently limited to cases concerning customs and traditional practices. The Act ensured that such courts were regulated and did not violate any constitutional rights. Appeals against the decisions of community courts could be made to a magistrate's court. Applicants for community court judgeships had to demonstrate familiarity with the traditions of the community in question. Their applications were considered by the Ministry of Justice. Community courts fell within the category of lower courts and the Government did not interfere in their proceedings. They performed a dispute settlement function while promoting peace and stability within traditional communities.

6. Given the complexity of customs and traditions within Namibia, the bills on customary marriage and intestate succession had been the subject of a long drawn-out consultation process involving the traditional community authorities. It was likely that the bills would be submitted to Parliament during the current financial year.

7. Under the Children's Status Act, Act No. 6 of 2006, all children were treated equally with regard to inheritance. One of the main aims of the Act was to eliminate discrimination against children born out of wedlock. Inheritance issues in regard to such children were resolved by the High Court, as in the case of *Frans v. Paschke and Others* 2007. Under the Communal Land Reform Act, land rights were guaranteed for women married under both civil and customary law.

8. The definition of fundamental rights and freedoms under section 1 of the Ombudsman Act was being reviewed in order to include economic, social and cultural rights. The proposed amendments would give the Office of the Ombudsman a broader mandate in line with the Paris Principles. For instance, provisions allowing the Ombudsman to carry out announced and unannounced visits to places of detention were being considered. During the period under review, four complaints concerning racial discrimination had been submitted to the Office of the Ombudsman, only one of which had been substantiated. In 2008, the Ombudsman had held public hearings on the issue of racial discrimination, preceded by a media campaign to raise awareness of the mandate and objectives of the Office. However, the outcome had been inconclusive owing to low public participation. Under its current annual plan of activities, the Ombudsman investigated cases of racism in order to make recommendations on how to prevent such cases from recurring.

9. With regard to land reform policy, the Agricultural (Commercial) Land Reform Act of 1995 allowed aggrieved individuals to appeal against the decisions of statutory bodies in land disputes in order for corrective action to be taken. Women were protected under the Land Reform Programme which had been revised to allow applications for land tenure from married women. The Government continued to ensure the allocation of land to disadvantaged communities including the San community, displaced persons, persons with disabilities, landless persons and persons living in overcrowded areas. An amendment to the Agricultural (Commercial) Land Reform Amendment Act authorized the Minister responsible for land matters to expropriate land, subject to fair compensation. Under the National Resettlement Policy, the San community was identified as the main target group for resettlement.

10. The Employment Equity Commission administered the Affirmative Action (Employment) Act of 1998 in order to ensure black people's access to managerial and supervisory posts. Relevant employers were required to submit an affirmative action report detailing the representation of black persons at almost every level of employment across all economic sectors. In 2014-2015, almost 700 employers had reported on approximately 168,000 employees: persons from disadvantaged communities had accounted for 87 per cent of the total number of employees but only 37 per cent of them had been employed in supervisory posts; 84 per cent of the employees reported on had been black but they had occupied only 56 per cent of managerial positions; 39 per cent of managerial positions had been held by women, 9 per cent by foreign nationals, and 1 per cent by persons with disabilities.

11. National language policies were in place to promote the use of local languages in public services. For example, interpreters were available in all courts for persons who did not speak English, and individuals were entitled to use their mother tongue in a number of public services such as hospitals. In schools, children had to be taught in their mother tongue during their primary education and there was a special focus on the San and Ovahimba communities. Teaching materials were also provided in different languages. Regional authorities were required to implement such policies. With regard to the media, the public broadcaster aired television programmes in eight local languages including San. Certain newspapers contained sections written in indigenous languages, such as the State-owned newspaper New Era.

12. The Government had put an end to segregation in the education system. All children were guaranteed the right to education under the Constitution. Primary education was compulsory and free of charge up to the final primary grade or the age of 16, whichever came first. As of 2016, secondary education was also free. Measures were in place to keep indigenous children in school and there was a mobile schools programme for nomadic children. No mobile schools had been closed down although the maintenance of such schools posed logistical challenges.

13. The School Development Fund had been abolished, releasing parents from the obligation to pay financial contributions to public primary schools. A programme was in place which provided children with at least one free school meal per day. The programme had had a positive impact on attendance and examination pass rates. In order to encourage school attendance by San children, the Government provided financial assistance to schools to cover their transport costs. Himba children were entitled to attend school in traditional dress. Regarding girls' education, one of the goals of the national plan of action 2001-2015 had been to ensure that all children, particularly girls from marginalized communities, had access to free primary education of good quality.

14. In order to ensure the participation and consultation of indigenous communities in regard to policymaking issues affecting them, the San Development Programme had been transferred from the Office of the Prime Minister to the Office of the President. The Programme involved annual visits to the San community by representatives from the Office of the Prime Minister. The Programme had since been renamed the Division for Marginalized Communities owing to its focus on improving the quality of life of other marginalized communities, in addition to the San, by ensuring their economic integration through access to education, land, health care, and employment. The Office of the Prime Minister had appointed development planners in areas where such communities lived in order to assist with their developmental needs. Moreover, the Government promoted the appointment of persons from marginalized communities in both the public and the private sector.

15. All indigenous peoples had recognized traditional leaders who were able to influence national issues and who were consulted on the drafting of policies aimed at the development of their communities. Indigenous men and women served on government bodies to facilitate consultation with indigenous communities. For example, the deputy minister in charge of the Division for Marginalized Communities under the Office of the President was of San origin. Under the Traditional Authorities Act, any traditional community could apply to the Government for recognition of their traditional authority. In the case of the Khwe San community, their application had been referred to the Committee on Tribal Disputes, which had found that the Khwe San community had not retained an autonomous land base as they had claimed. The Council of Traditional Leaders, to which the matter had later been referred for further investigation, had reached the same conclusion.

16. A total of eight farms had been procured for the resettlement of marginalized communities since 2005. They were used for animal husbandry, tourism and crop production.

17. In addition to livestock many small farms had gardens and produced charcoal and firewood, often for sale. More than 18,000 hectares had been allocated to four San communal farm areas in the north and west of the country. San residents of urban areas could also make a request to their traditional authorities to be allocated communal land. The local chiefs concerned were consulted for their input and permission. Nearly 300 families had received land in that manner. More than 30 brick and 80 temporary homes had been built for the San in a number of areas. Government ministries, including the Ministry of Youth, National Service, Sport and Culture, the police and defence forces, and the private

sector, were working to increase recruitment of members of the San and other marginalized groups.

18. Regional government offices were responsible for helping the San and other marginalized groups, including the elderly, with burial costs. All citizens, including the San and other marginalized groups, were eligible for old-age pensions. Her Government was working to improve the standard of living of women and children in general. Mobile teams travelled the country to inform the population of their assistance entitlements.

19. Efforts to combat HIV/AIDS, including among the San population, were carried out in the context of the Overall Health Policy Framework 2010-2020, developed in consultation with all stakeholders. Approximately 7.6 million Namibian dollars had been spent on HIV/AIDS in 2005-2012. Anti-retroviral therapy was available across the country at the 35 district hospitals and major dispensaries. There had been significant improvement in the treatment, survival rates and quality of life of those affected.

20. Regarding San land rights, she noted that article 100 of the Constitution stated that all land resources belonged to the State if not otherwise lawfully owned. Currently 24 per cent of agricultural land was owned by white farmers and 3 per cent by foreign interests. The remaining land was included in the communal land bank and could be allocated as needed, in trust, to communities, including disadvantaged groups. The San were granted 99-year inheritable leases for the lands allocated to them. The purpose of the Communal Land Reform Act was to reduce poverty through a more balanced distribution of land resources, and thereby increase self-sufficiency and employment.

21. Every effort was being made to increase access to education for children from marginalized groups, including the San and Himba. Kindergartens had been opened in all villages, schools were located close to their communities and there were quotas for the hiring of teachers from those communities. There was a stay-in-school campaign. A policy document on national options for educationally marginalized children had been adopted in 1998.

22. **Ms. Böhlke-Möller** (Namibia), referring to the issue raised in paragraph 3 (g) of the list of themes, said that rape was a problem for all groups in the country, not only the San, and that the situation was often aggravated by alcohol and drug abuse. Victims were encouraged to report rape but unfortunately few did so. Her Government was working to increase awareness of that scourge in marginalized communities, for example through services provided by the Ministry of Health.

23. The State party was working to develop the fishing sector and promote fish as part of its efforts to increase employment and improve the population's diet. Marginalized groups were allotted fishing quotas. Emphasis was also placed on added-value activities through local onshore processing of the fish caught, which also increased employment opportunities, including for marginalized groups. Great progress had been made since the launch of the Fish Consumption Promotion Trust in 2001 to promote fishing and proper cooking and consumption of fish as an affordable and nutritious food. It was widely available in shops and was incorporated in the school meal programme.

24. With regard to the impact of the Affirmative Action (Employment) Act, she said that according to the 2013-2014 report of the Employment Equity Commission racially disadvantaged men made up 49 per cent of the working population, racially advantaged men 3 per cent, men with disabilities 3 per cent, and non-Namibian citizens 1 per cent. The figures for women from racially disadvantaged and advantaged groups were 42 and 2 per cent, respectively. No statistics were available on the marginalized communities specifically. Her Government was working to increase employment opportunities for marginalized women through development activities, for example training in tailoring and baking. Many San women produced crafts for sale.

25. All non-citizens, including refugees and asylum seekers, had full access to health care and social services. Her Government respected the principle of non-refoulement. Refugees were housed in the Osire Refugees Settlement; they could request permission from the Administrator to leave the settlement for up to 14 days, whether they stayed in Namibia or went abroad. Permits were also granted for those wishing to study outside the settlement or who had found a job. Most of the refugees were Angolan; more than 2,000 Angolan refugees who had not chosen voluntary repatriation by 2013 had been integrated into Namibian society. She recalled that Namibia had entered a reservation to article 26 of the 1951 Convention relating to the Status of Refugees giving it the right to designate a place or places for principal reception and residence for refugees or to restrict their freedom of movement if considerations of national security so required or made it advisable.

26. The Ministry of Poverty Eradication and Social Welfare had been established in 2015 and a strategy to eradicate poverty had been elaborated in 2015. In October 2015 the President had declared a war on poverty, stressing that all Namibians had the right to a life of dignity, with access to employment, health care, potable water, sanitation and education. Social grants had been allocated to reduce poverty. The tax system also contributed to poverty reduction: income tax increased in proportion to income; persons with income under 50,000 Namibian dollars paid no income tax; basic foodstuffs were exempt from value added tax. A solidarity tax on higher incomes would soon be introduced, the proceeds of which would be allocated to a poverty reduction fund. Food banks were being established across the country, especially in urban areas where families had no productive land. The Government was committed to ensuring that no child went hungry.

27. Great progress had been made in addressing the problems of segregation and inequality that had existed at independence. The poverty rate had dropped from 59.3 per cent at independence to 28.7 per cent in 2010, and continued to drop, thanks in large part to fiscal policies and increased grants for the elderly. The number of persons receiving subsidies had increased: for example, in 2014 some 70 per cent of persons with disabilities had received social assistance grants. The number of persons with access to electricity had almost doubled by 2011, including 30 per cent of persons living in rural areas as compared to none at independence.

28. The literacy rate had increased from 78 per cent in 1991 to 90 per cent in 2011, and the number of children attending school had increased from 439,000 to more than 600,000 in the same period. Since independence, total student loans had increased from 17 million Namibian dollars to nearly one billion, gross domestic product (GDP) from 8 billion to 141 billion Namibian dollars in 2014, and GDP per capita from 5,600 to 63,000 Namibian dollars. The national budget had increased from 2.1 billion to 66 billion Namibian dollars, and public spending on education as a percentage of GDP from 5.8 per cent to 8.6 per cent.

29. She explained that, under the relevant legislation, all unallocated State land and land not legally owned was communal land belonging to the State but occupied by the traditional occupants and used in the public interest. She undertook to provide further information on the effectiveness of the Affirmative Action (Employment) Act, especially for the black population; she noted that the Employment Equity Commission issued certificates of compliance for affirmative action plans but acknowledged that more must be done to ensure equal opportunity. She assured the Committee that the police electronic disaggregated database posed no threat to the right to privacy; it was accessible only to the police as a means of increasing their efficiency, for example by keeping track of witnesses. She said that 581 secondary and tertiary-level students from marginalized communities were receiving assistance for their studies; that figure was in addition to the students not receiving special assistance.

30. With regard to the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, she said that before ratifying any international treaty the State

party ensured that its domestic legislation would be in conformity with those instruments. With regard to developments relating to the colonial era genocide, she said that her Government and the Government of Germany had each appointed an envoy to serve as liaison between their governments and the communities concerned on that issue.

31. **Ms. Shapwa** (Namibia) said that large tracts of land had to be allocated to only one individual or family because the prevailing dry climate made it necessary for farms to comprise between 2,000 and 5,000 hectares of land according to regional conditions, in order to be viable. Communal lands were State-owned and included all lands not in urban areas or considered commercial agricultural lands. They were allocated to individuals and families by the traditional chiefs in consultation with the local population and in accordance with the Communal Land Reform Act. Those occupying that land did not therefore technically own the land but neither could they be arbitrarily removed.

32. **The Chair** said that the State party should continue its efforts to develop the fishing industry as a way of increasing employment and providing an alternative food source to the population.

33. **Mr. Avtonomov** (Country Rapporteur) asked whether the delegation could provide written copies of its remarks to the Committee. He welcomed the delegation's explanations regarding communal lands although he noted that indigenous peoples often preferred to have community ownership of the land they occupied. He also welcomed the explanations of the roles of traditional, including San, chiefs, and the role of community courts. While he understood the State party's desire to promote unity of identity in the country, he stressed the importance of developing disaggregated data in order to better capture the relative situation of disadvantaged groups and help the Committee make recommendations to improve their lot. Lastly, he asked for information on the situation of the albino population.

34. **Mr. Kut**, noting that Namibia had not acted on the Committee's request to provide information within one year on its follow-up to specific recommendations set out in the Committee's previous concluding observations (CERD/C/NAM/CO/12), reminded the delegation of the importance it attached to receiving such information.

35. Although the Committee always welcomed any measures that contributed to the preservation of minority groups that would not otherwise be able to survive, it was also very mindful of the need to ensure that the Convention applied to everyone throughout the country. He therefore asked what precautions the Government was taking to ensure that, in the application of customary law by community courts, all individuals remained protected under the Convention.

36. He requested updated information on the State party's efforts to prevent, combat and punish hate speech and on how the relevant laws were applied. He asked whether there had been any court cases involving hate speech or discriminatory comments made by government officials.

37. **Ms. Shapwa** (Namibia) said that it would be very difficult for her Government to go against its own policy on the collection of disaggregated data, as the aim was to maintain unity and not to divide people into groups along ethnic or tribal lines. If there was a pressing need for such data, however, it could be collected.

38. There had not been any reported cases of mistreatment of albinos. They were treated on an equal footing with other citizens and were provided with free treatment for health conditions related to sun exposure. The legislation governing hate speech was currently under review. If it was found that there was a need for a provision explicitly prohibiting hate speech, such a provision could be introduced. In Namibia, hate speech generally occurred between members of dominant groups and was not directed at minority or marginalized groups.

39. Community courts dealt only with violations of traditional customs and practices, while criminal cases involving acts such as murder or rape were tried by the ordinary courts. Confusion about the situation might stem from the fact that, in murder cases, grievances between the families of the victim and the accused were dealt with by the community courts as a way of maintaining peace between the families, but the accused would still be tried for the offence by the ordinary courts.

40. There had not been any reported cases of hate speech or discriminatory comments by government officials. Most officials were well aware that they were prohibited from discriminating against members of marginalized groups in any way. Indeed, those persons generally received priority treatment in government offices.

41. **Mr. Kut** asked whether there was a mechanism in place to ensure that community courts respected the Convention in the application of customary law.

42. **Ms. Shapwa** (Namibia) said that no courts in Namibia applied any law that contradicted the laws of the nation. If a decision by a community court was thought to be in violation of Namibian law, it could be appealed before a magistrate's court.

43. **Mr. Dyakugha** (Namibia) said that there had been a case in which a community court had violated national law by handing down a sentence of corporal punishment, which had then been overturned by a higher court. As all international conventions to which Namibia was a party were part and parcel of Namibian law, they would be upheld by the courts in cases where the decisions of community courts were appealed.

44. **Ms. Shepherd** asked what sectors of the economy were dominated by the white minority in comparison with other ethnic groups. She also asked whether there was racism against blacks in Namibia and, if so, how it was manifested. Referring to the imprisonment of Rastafarians for up to 20 years for possession of small amounts of ganja, and the case of a Rastafarian schoolboy who had been sent home and told to cut his dreadlocks because his appearance did not conform to the school rules, she asked to what extent the cultural rights of Rastafarians were respected in Namibia. Lastly, she wished to know who produced the history books and other teaching materials used in schools and who had access to tertiary education.

45. **Ms. McDougall** asked why there had been so little interest in public hearings on racial discrimination. Despite the many programmes and policies in place to reduce poverty, the poverty level in Namibia remained high. She asked the delegation to comment on that situation and on whether there was a need to intensify those programmes or to create more social grant programmes. She wondered whether the Government had sufficient control over the country's resources, particularly those that had been held by the white minority prior to independence. She wished to know specifically about the ownership of mines and fisheries and whether those resources were being reallocated.

46. **Ms. Shapwa** (Namibia) said that the white minority remained dominant in certain sectors of the economy, such as banking, construction and tourism. Those were sectors that required intensive capital, and it was therefore difficult for people from previously disadvantaged groups to obtain the necessary resources to enter those sectors. The Development Bank of Namibia and the SME Bank had been established to help members of previously disadvantaged groups overcome those difficulties. Fishing quotas were allocated only to members of previously disadvantaged groups. Some members of those groups found it necessary to enter into partnerships with white persons already established in those industries. The ownership profile was changing, however, in fishing, tourism, construction and other sectors.

47. While racism in Namibia most commonly took the form of tribalism, there had been cases of racism against blacks. All forms of racism were prohibited under the Constitution,

and the need for further legal prohibitions was currently under consideration. Namibian law was not discriminatory against Rastafarians, and redress was always available to anyone who believed themselves to be a victim of discrimination. Possession of ganja was prohibited, and all cases would be prosecuted regardless of the amount possessed.

48. **Ms. Pickering** (Namibia) said that the National Institute for Educational Development had been set up in 1990 to design, develop and monitor the implementation of national curricula for pre-primary, primary and secondary schools, evaluate educational materials and textbooks, develop teaching manuals, support the nationwide network of teacher resource centres and provide teacher training. Students studied Namibian, rather than European, history, using textbooks written by local historians.

49. **Ms. Shepherd** said that the delegation had not yet responded to questions on access to free tertiary education and respect for the ritualistic aspects of the heritage and culture of the Rastafarian community.

50. **Ms. Shapwa** (Namibia) said that Rastafarians were free to perform their rituals on the condition that they did not violate national legislation. Tertiary education was provided on a fee-paying basis; however, the Government provided bursaries for students from economically disadvantaged communities. The Ombudsman's Office intended to further raise public awareness of racial discrimination.

51. **Ms. Pickering** (Namibia) said that the rate of extreme poverty in Namibia currently stood at 13 per cent, whereas the overall poverty rate was 27 per cent.

52. **Ms. Shapwa** (Namibia) said that the Government controlled the nation's natural resources. The Ministry of Mines and Energy was responsible for issuing mining and exploitation licences, which were currently mainly reserved for previously disadvantaged citizens and any foreign business partners they might have. The Ministries of Fisheries and Marine Resources, Lands and Resettlement and Environment and Tourism had set up quota systems exclusively for previously disadvantaged citizens.

53. **The Chair** asked whether certain industries were still controlled by white owners.

54. **Ms. Shapwa** (Namibia) said that, at the time of independence, the Government had chosen not to nationalize private property, opting rather for the gradual introduction of shared ownership. Consequently, several mines remained in the hands of members of the white community.

55. **Mr. Dyakugha** (Namibia) said that the Government had a 50 per cent stake in a number of mines and had set up a State-run mining company known as Epangelo Mining.

56. **Mr. Murillo Martínez** said that he would welcome more detailed information on measures relating to compensation for the genocide committed by the German colonial authorities against the Herero and Himba peoples and on the legal framework for public consultations. Electronic police databases could be a double-edged sword.

57. **Mr. Kemal** said that the State party was to be congratulated on its efforts to encourage previously disadvantaged citizens to directly exploit the country's natural resources, in particular fish stocks. He asked whether the problems relating to the operation of a mobile school programme for the Himba had been resolved.

58. **Mr. Yeung Sik Yuen** said that clarification of the difference between customary and common law would be welcome. Noting that paragraph 19 of the State party's report contained a reference to discriminatory laws on inheritance, he asked whether any other examples existed of provisions of customary law that were contrary to the Convention.

59. **The Chair** asked what measures had been taken on the basis of the finalized report on intestate succession referred to in paragraph 22 of the State party's report.

60. **Mr. Yeung Sik Yeun** asked whether women and girls faced gender-based discrimination in the context of aid distribution.

61. **Ms. Mohamed** said that she wished to know whether domestic workers from Namibia came from one specific ethnic group in particular and whether national languages had a written form and were taught in schools.

62. **Mr. Clase** (Namibia) said that all forms of institutional discrimination in the fields of education, health care and public service were illegal under the Racial Discrimination Prohibition Act and the Constitution. Those instruments did not specifically make provision for intertribal racism and hate speech, although amendments to the Act in that regard were currently being considered.

63. Namibia applied customary, common and statutory law, all of which must be in line with the Constitution. Under the Constitution, common and customary law had equal status but must comply with statutory law. Customary courts must enforce the provisions of the Convention. Statutory law took precedence over customary law in cases where the latter was not in line with the Convention. A law was currently being prepared in order to align customary practices with statutory law in terms of the age of marriage. There were a large number of different ethnic groups in Namibia, each of which must be consulted prior to the introduction of any legislation.

64. The electronic police database had been introduced in order to facilitate the tracing of witnesses, access to information on victims and the collation of disaggregated data on different types of offences and of crime statistics, rather than to provide for the profiling of any one group of persons.

65. The Law Reform and Development Commission had been set up in 1991 to review national legislation and to make recommendations to Parliament regarding amendments to laws on a number of issues, including inheritance and racial discrimination. Prior to making any proposals, the Commission must carry out consultations with all the ethnic groups present in Namibia. Parliament could commission further consultations if necessary.

66. **Ms. Shapwa** (Namibia) said that the Governments of Namibia and Germany had appointed envoys to deal with the issue of the genocide of the Herero and the Himba. Furthermore, Namibia had set up a technical committee, which was currently involved in discussions with the communities concerned, as well as with the envoys and the two Governments in question.

67. Domestic workers came from all of the State party's various ethnic groups, with the exception of the white community, and were mainly women. Local languages had a written form and were taught in schools.

68. **Mr. Clase** (Namibia) said that the long-running mobile school programme for the Himba community was still fully operational, despite the difficulties involved in running such a service in a mountainous region. Permanent schools had been built in three villages and were equipped with solar panels and accommodation for teaching staff. Students from marginalized communities received State grants covering tuition fees, books, accommodation and transport.

69. **Mr. Avtonomov** (Country Rapporteur) said that the dialogue with the delegation of Namibia had been extremely constructive and that the State party had done much to build a new society free of racial discrimination.

70. **Ms. Shapwa** (Namibia) said that the State party was committed to combating racial discrimination and reviewing existing relevant legislation.

71. **The Chair** said that the delegation of Namibia was to be congratulated on the honest, open approach it had adopted to the shortcomings affecting national legislation and the complex issues of redistribution and ownership of national resources.

The meeting rose at 1 p.m.